

**TOWN OF HOTCHKISS**

**ORDINANCE NO. 2024-09**

**AN ORDINANCE OF THE TOWN OF HOTCHKISS, COLORADO**

**WHEREAS**, the Town of Hotchkiss (the “Town”) is a statutory Town in accordance with C.R.S. 31-1-203; and

**WHEREAS**, the Town has those powers vested to pursuant to C.R.S. 31-15-101 et. seq.; and

**WHEREAS**, the Town has general police powers vested pursuant to C.R.S. 31-15-401, which includes the power to pass and enforce all necessary police ordinances; and

**WHEREAS**, the Board wishes to update is Criminal Code.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF HOTCHKISS, COLORADO, THAT:**

**SECTION 1. AMENDMENT TO THE TOWN MUNICIPAL CODE:**

The following provision shall replace Chapter 17 of the Hotchkiss Municipal Code.

ATTACHED EXHIBIT A

**SECTION 2. ORDINANCE EFFECT.** Existing ordinances or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and any and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed, provided however, that the repeal of any ordinance or parts of ordinances of the Town shall not revive any other section of any ordinance or ordinances hereto before repealed or superseded and further provided that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

**SECTION 3. EFFECTIVE DATE.** This Ordinance shall take effect thirty days after publication.

**SECTION 4. PUBLIC HEARING.**

A public hearing on this Ordinance was held on the 12<sup>th</sup> day of December 2024, at Town Hall for the Town of Hotchkiss, 276 W. Main Street, Hotchkiss, CO 81419.

**INTRODUCED, READ AND REFERRED to public hearing before the Board of Trustees of the Town of Hotchkiss, Colorado on the 14<sup>th</sup> day of November 2024.**

**TOWN OF HOTCHKISS**

By:   
Pat Medina, Mayor Pro Tem

ATTEST:

  
Ginger Redden, Town Clerk

**HEARD AND FINALLY ADOPTED by the Board of Trustees of the Town of Hotchkiss, Colorado, this 12<sup>th</sup> day of December 2024**

**TOWN OF HOTCHKISS**

By:   
Pat Medina, Mayor Pro Tem

ATTEST:

  
Ginger Redden, Town Clerk

## EXHIBIT A

### NEW CHAPTER 17

#### I. OFFENSES BY OR AGAINST PUBLIC OFFICERS AND GOVERNMENT

##### Chapter 17.01 - RESERVED

##### Chapter 17.02 - INTERFERENCE WITH FIRE DEPARTMENT

###### Sec. 17.02.010. - Interference with alarm systems; false alarms.

- A. It shall be unlawful for any person to knowingly or intentionally damage or interfere with any fire alarm system or any part of such fire alarm system.
- B. It shall be unlawful for any person to make or give a false fire alarm, or a false alarm for a rescue call.

**State Law reference**— False fire alarms, C.R.S. § 18-8-111.

###### Sec. 17.02.020. - Turning off water on sound of alarm required.

Upon the sounding of an audible signal indicating a fire alarm, all persons shall immediately turn off all water hoses and faucets and keep the such water hoses and faucets turned off until a signal is given signifying that the fire is under control. Any failure to so turn off the water shall constitute a violation of this Code.

###### Sec. 17.02.030. - Interference with firefighters on duty prohibited.

It shall be unlawful for any person to knowingly or intentionally hinder, oppose, obstruct, or interfere with any member of the fire department while such member is in performance of his duty.

**State Law reference**— Similar provisions, C.R.S. § 18-8-104.

###### Sec. 17.02.040. - Fire drill regulations.

The owner or person in charge of any theater, assembly hall, school, or other public place designated by the Fire Chief shall instruct personnel and pupils of such places in fire procedures and fire drills and shall hold a fire drill at least twice each year. Any refusal or failure to give the such instruction or to hold the such fire drills shall constitute a violation of this Code.

##### Chapter 17.04 - INTERFERENCE WITH POLICE

###### Sec. 17.04.010. - Resisting an officer.

It shall be unlawful for any person to knowingly or intentionally resist any police officer or to in any way interfere with or hinder such police officer in the discharge or apparent discharge of his duty.

**State Law reference**— Similar provisions, C.R.S. § 18-8-103.

###### Sec. 17.04.020. - Aiding prisoner to escape.

It shall be unlawful for any person to rescue or attempt to rescue, or to aid in the escape of, any person who is charged with a misdemeanor and is in the custody of a police officer.

**State Law reference**— Similar provisions, C.R.S. § 18-8-201.

**Sec. 17.04.030. - Citizens' duty to aid.**

It shall be the duty of all persons when called upon by any police officer, to promptly aid and assist such officer in the discharge of his duties.

**State Law reference**— Similar provisions, C.R.S. § 18-8-107.

**Sec. 17.04.040. - Failure to appear.**

- A. It is unlawful for any person to fail to appear in court as required by a summons, fail to appear at any post-arraignment proceeding or fail to comply with an order of the municipal court. In the event any person fails to comply, or fails to respond to a summons, order and/or notice directing an appearance in municipal court, the Town attorney, municipal prosecutor, or municipal judge, shall forthwith file a complaint against such person.
- B. If a person fails to appear or comply with a court order, the clerk shall issue and have served a warrant for the person's arrest, except that a warrant will not be issued:
  - 1. In those cases where the person is charged with a civil traffic infraction where entry of a default judgment is authorized by any provision of this Code; or
  - 2. In those cases where the person is charged with any other ordinance violation deemed civil by any provision of this Code and for which imprisonment is not a possible penalty.

**Sec. 17.04.045. - Giving false information prohibited.**

It is unlawful for any person to knowingly and willfully give false information to any firefighter or police or code enforcement officer of the Town acting in his official capacity, concerning the identity of any person participating in, connected with or responsible for, or concerning the matter of the commission of any act, if the legality thereof or the identity of those participating therein or connected therewith or responsible therefor are being investigated, as a part of his official duties or employment by such officer.

**Sec. 17.04.050. - Disobeying a lawful order.**

It is unlawful for any person to knowingly disobey the lawful order of any police officer, firefighter, or emergency personnel giving incident to the discharge of the official duties of such police officer or firefighter.

**III. OFFENSES AGAINST PUBLIC DECENCY**

**Chapter 17.22 - OFFENSES RELATING TO ALCOHOL**

**Sec. 17.22.010. - Definitions.**

- A. As used in this chapter, the following term shall have the following meaning:

*Licensee* means any person duly licensed to sell alcohol beverages in the Town, or any agent, servant, or employee of such licensee.

- B. Words and phrases not otherwise defined herein shall have the meanings set forth in title 12, articles, 46, 47, and 48, C.R.S., as they currently exist or may hereafter be amended, and such definitions are incorporated herein by reference.

**Sec. 17.22.020. - Disorderly conduct—Permitting.**

It shall be unlawful for any Licensee to permit any disturbance, or unlawful or disorderly act or conduct, to be committed by any person or group of persons upon any premises licensed for the sale of alcohol beverages or beverages.

**Sec. 17.22.030. - Disorderly conduct—Encouraging.**

It shall be unlawful for a Licensee in any manner to encourage or participate in any disturbance, or unlawful or disorderly act or conduct, upon premises selling alcohol beverages; provided, however, that the Licensee may use such lawful means as may be proper to protect his person or property from damage or injury.

**Sec. 17.22.040. - Warning sign to be displayed.**

Each Licensee shall post, and keep at all times visible to the public, in a conspicuous place on the premises a sign to be furnished by the Town clerk's office. Such sign shall be in the following form:

"WARNING! HOTCHKISS POLICE MUST BE NOTIFIED OF ALL DISTURBANCES IN THIS ESTABLISHMENT AND ON THE GROUNDS WHICH ARE A PART OF THIS ESTABLISHMENT."

**Sec. 17.22.050. - Reports of disturbances required.**

Any Licensee shall immediately report to the Town police department any unlawful or disorderly act, conduct, or disturbance committed on the premises.

**Sec. 17.22.060. - Selling to certain persons prohibited.**

No person shall sell, serve, give away, dispose of, exchange, or deliver, or permit the sale, serving, giving away or procuring of, any alcohol beverages, to or for any person under the age of 21 years or to a visibly intoxicated person, or a known habitual drunkard.

**State Law reference**— Age restrictions, C.R.S. § 12-47-128.

**Sec. 17.22.100. - Prosecution and conviction.**

Prosecution or conviction under this Chapter shall not prohibit prosecution or conviction under any other applicable state or local law or ordinance; and the penalties provided by this Chapter shall be accumulative and in addition to all other penalties incurred under any other applicable law or ordinance enacted by the Town.

**Sec. 17.22.110. - Absence of licensee not a defense.**

It shall not be a defense that the Licensee was not personally present on the premises at the time any unlawful or disorderly act, conduct, or disturbance took place; provided, however, that an agent, servant, or employee of the Licensee shall not be responsible under this Chapter when absent from the premises while not on duty.

**IV. OFFENSES AGAINST PUBLIC PEACE**

**Chapter 17.32 - OFFENSES AGAINST PUBLIC PEACE, ORDER AND DECENCY**

**Sec. 17.32.010. - Disorderly conduct.**

- A. It shall be unlawful for any person to commit any act which constitutes disorderly conduct as defined in this section.
- B. A person commits "disorderly conduct" if such person intentionally, knowingly or recklessly:

1. Fights with another in a public place except in an amateur or professional contest of athletic skill; or
2. Makes an unreasonable noise in a public place or near a private residence that such person has no right to occupy; or
3. Repeatedly makes coarse and obviously offensive utterances, gestures, or displays in a public place or near a private residence that the person has no right to occupy, and the abuse, threat or utterance, gesture, or display tends to incite an immediate breach of the peace; or
4. Commits any act which is likely to lead to an immediate breach or disturbance of the peace; or
5. Permits any conduct in any house or upon any premises owned or possessed by such person or under such person's management or control, and the conduct is within such person's power to prevent, so that others in the vicinity are disturbed thereby.

**Sec. 17.32.020. - Assault.**

A. A person commits the crime of assault in if:

1. The person knowingly or recklessly causes bodily injury to another person or with criminal negligence the person causes bodily injury to another person by means of a deadly weapon; or
2. The person, with intent to harass, annoy, threaten, or alarm another person whom the actor knows or reasonably should know to be a peace officer, a firefighter, an emergency medical care provider, or an emergency medical service provider, causes the other person to come into contact with blood, seminal fluid, urine, feces, saliva, mucus, vomit, or toxic, caustic, or hazardous material by any means, including throwing, tossing, or expelling the fluid or material.

Assault, C.R.S. § 18-3-204.

**Sec. 17.32.030. - Threat of reprisal.**

It is unlawful for any person to threaten violence, reprisal, or any other injurious act to any police officer, firefighter, Town employee or other public official who is engaged in the performance or attempted performance of official duties, or to make such a threat by reason or on account of performance or attempted performance of his official duties.

Similar provisions, C.R.S. § 18-8-104.

**Sec. 17.32.040. - Harassment.**

A. It is unlawful for any person, with the intent to harass, annoy or alarm another person, to:

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 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. Directly or indirectly initiates communication with a person or directs language toward another person, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computer network, computer system, or other interactive electronic medium in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, computer system, or other interactive electronic medium that 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
  - f. 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
  - g. Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.
- B. As used in this section, unless the context otherwise requires, "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal, actual, or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.
  - C. Any act prohibited by paragraphs A.1 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.
  - D. This section is not intended to infringe upon any right guaranteed to any person by the first amendment to the United States constitution or Article 1 or to prevent the expression of any religious, political, or philosophical views.

**Sec. 17.32.050. - Indecent exposure.**

It is unlawful for any person to knowingly expose such person's genitals to the view of any other person under circumstances in which such conduct is likely to cause affront or alarm to such other person, with the intent to arouse or to satisfy the sexual desire of any person.

**Sec. 17.32.060. - Urinating in public prohibited.**

It is unlawful for any person to urinate in any public way, or place which is public in nature, or any place within the Town open to the public view.

**Chapter 17.34 - DISTURBANCES**

**Sec. 17.34.010. - Disturbance of the peace.**

- A. It is unlawful for any person to disturb or tend to disturb the peace and quiet of others by violent or offensive conduct or making unreasonably loud or unusual noises.
- B. Unreasonably loud or unusual noises include but are not limited to:
  - 1. The playing, use, operation of, or the permitting to be played, used or operated, any radio receiving set, musical instrument, phonograph, or other device for producing or reproducing sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is reasonably necessary for convenient hearing for any persons in the structure or vehicle in which the device is operated and who are voluntary listeners thereto. The operation of any such device between the hours of 12:00 midnight and 6:00 a.m. in

such manner as to be plainly audible at a distance of 50 feet from the structure or vehicle in which it is located is prima facie evidence of a violation of this section.

2. Yelling, shouting, hooting, whistling, or singing, particularly between the hours of 12:00 midnight to 6:00 a.m. or at any time or place as to annoy or disturb the quiet, comfort, or response of any persons in the vicinity.
- C. it is a specific defense to a charge of violating this Chapter:
  1. The sound was made by an authorized emergency vehicle when responding to an emergency call or acting in time of emergency;
  2. The sound was made within the terms of a parade, fireworks display or temporary street closure permit issued by the Town;
  3. The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law;
  4. The sound was made on property belonging to or leased or managed by a federal, state, county or special district governmental body other than the Town and was made by an activity of the governmental body or by others pursuant to a contract, lease or permit granted by such governmental body; or
  5. The sound was made within the terms and conditions of a sound level variance granted by the Town. A variance may be granted after application is made if the Town Council finds that compliance will cause any undue hardship and further finds that:
    - a. Additional time is necessary for the applicant to alter or modify the activity or operation to comply with this Section; or
    - b. The activity, operation or sound device will be of temporary duration, and even with the application of the best available control technology cannot be done in a manner that would comply with this Section. In either case, the Board of Trustees must also find that no reasonable alternative is available to the applicant. If the Board of Trustees grants a variance, it shall prescribe such reasonable conditions or requirements as are necessary to minimize adverse effects upon the community or the surrounding neighborhood, including, but not limited to, the effective dates, time(s) of day, location, sound pressure level or equipment limitation.
  6. Noise caused in the performance of emergency work for the immediate safety, health or welfare of the community, or to restore property to a safe condition following a public calamity, or noise caused by the operation of snow plowing equipment or drilling wells shall not be subject to the provisions of this Chapter. Any person drilling wells shall advise property owners adjacent to where drilling will occur at least twenty-four (24) hours in advance of drilling and shall use noise abatement measures as practical. Nothing in this Section shall be construed to permit law enforcement, ambulance, fire or other emergency personnel to make excessive noise in the performance of their duties when such noise is clearly unnecessary.
  7. Applications for a special event permit for relief from the provisions of this Chapter may be made to the Town Clerk or its authorized representatives for noise which, if prohibited, would cause undue hardship to the person or party responsible for the noise, together with payment of such administrative fee as the town may establish. In granting relief, consideration shall be made of the nature of the event, and economic feasibility of bringing the noise into conformance with the Chapter. Any special event permit granted hereunder may establish, without limitation, the effective dates, times



of day, location or limitations relating to the particular circumstances giving rise to the permit.

- C. Town employees, Town volunteers, contractors of the Town, firefighters, emergency and rescue personnel, and law enforcement officers acting in the lawful performance of their duties are exempt from the prohibition in Section 17.34.010.
- D. This section is not intended to infringe upon any right guaranteed to any person by the first amendment to the United States constitution or to prevent the expression of any religious, political, or philosophical views.

**Sec. 17.34.020. - Disturbance of religious worship.**

It shall be unlawful for any person to disquiet or disturb any congregation or assembly for religious worship by making a noise, by rude or indecent behavior, or by profane discourse within the place of worship or so near the place of worship as to disturb the order or solemnity of the meeting.

**State Law reference**— Similar provisions, C.R.S. § 18-9-108.

**Sec. 17.34.030. - Unlawful assemblies.**

It shall be unlawful for any three or more persons to assemble together in the Town with intent to do an unlawful act; or, being assembled, to mutually agree or to act in concert to do an unlawful act with force or violence against the person or property of another or against the peace and to the terror of others.

**Sec. 17.34.040. - Operation of construction equipment.**

- A. Each building permit issued on or after the effective date of this code shall contain a provision prohibiting the permittee from operating or allowing the operation, outside of an enclosed structure, of any construction equipment for the permitted work outside of set hours of operation between the hour of 8:00 p.m. and, on weekdays, the hour of 7:00 a.m. or, on legal holidays and weekends, the hour of 8:00 a.m., except as provided in subsection B of this section.
- B. The Town Building Official may, upon written application, alter the hours of operation as described in subsection A of this section or eliminate the prohibition for good cause shown which may include, but shall not be limited to:
  - 1. Seasonal considerations;
  - 2. Mitigation of other problems to the surrounding property or occupants thereof;
  - 3. Written consent of occupants of surrounding property;
  - 4. Lack of occupants of surrounding property;
  - 5. Timing considerations based on the nature of the work being performed; or
  - 6. Health or safety considerations.

Upon receipt of a written complaint from any person, the Town Building Official shall promptly investigate the complaint, and thereafter may revoke the alteration of hours or exemption previously granted, limiting the permittee the hours of operation as set forth in Paragraph A.

- C. As used in this section, "construction equipment" means any equipment or devices, such as but not limited to, pile drivers, power shovels, derricks, hoist tractors, loaders, rollers, concrete hauling motor vehicles, pavement breakers, bulldozers, crawler-tractors, rotary drills and augers, cranes, ditchers, trenchers, scrapers, wagons, pumps, compressors and pneumatic power equipment, or other

mechanical apparatus operated by fuel or electric power in the construction, repair or demolition of any structure.

- D. Any violation of the time limitation set out in a building permit shall be subject to stop orders and other remedies provided in the Town Building Code in effect at the time. In addition, any person who violates any such time limitation may be punished by a fine of not more than the maximum fine set forth in in this Code or by imprisonment not to exceed one year or by both such fine and imprisonment. Each day during any portion of which any violation of any provision of this section is committed, continued, or permitted by any such person shall be a separate offense.

#### **Chapter 17.36 - CONDUCT NEAR SCHOOLS**

##### **Sec. 17.36.010. - Unlawful acts.**

It shall be unlawful for any person to loiter, idle, wander, stroll or play in, about or on any school or daycare facility, whether public or private, either on foot or in or on any vehicle, without having some lawful business therein or thereabout, or in connection with such school or the employees thereof; or for any person to:

- A. Annoy, disturb, or otherwise prevent the orderly conduct of classes and activities of any such school or daycare facility.
- B. Annoy, disturb, assault, or molest any student or employee of any such school or daycare facility on school or daycare grounds.
- C. Conduct himself in a lewd, wanton, or lascivious manner in speech or behavior in or about any school or daycare grounds.
- D. Park or move a vehicle in the immediate vicinity of, or on the grounds of, any such school or daycare facility, for the purpose of annoying or molesting the students or employees thereof, or in an effort to induce, entice, or invite students into such vehicle for immoral purposes.

#### **Chapter 17.38 - THROWING THINGS PROHIBITED**

##### **Sec. 17.38.010. - Throwing things prohibited.**

It shall be unlawful for any person to throw a stone, snowball, or any other object upon or at any person, animal, vehicle, building, tree, or other public or private property in a manner that causes or has substantial risk of causing injury or damage. As used herein, the word throw includes but is not limited to slinging, dropping, shooting, or launching.

### **V. OFFENSES AGAINST PROPERTY**

#### **Chapter 17.46 - PROPERTY DAMAGE**

##### **Sec. 17.46.010. - Town property.**

It shall be unlawful for any person to willfully, maliciously, wantonly, negligently or in any manner injure or destroy any property owned by the Town where such damage caused is valued at less than \$2,000.00.

##### **Sec. 17.46.020. - Private property.**

It shall be unlawful for any person to willfully, maliciously, wantonly, negligently or in any manner injure or destroy any property belonging to any person where such damage caused is valued at less than \$2,000.00.

##### **Sec. 17.46.030. - Theft.**

It is unlawful for any person to knowingly obtain or exercise control over any item or items of value of less than \$2,000.00 without authorization or by threat or deception and who:

- 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 deprives 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; or
- D. Demands any consideration to which it is not legally entitled as a condition to restoring the thing of value to the other person.
- E. Knowingly retains the thing of value more than seventy-two hours after the agreed-upon time of return in any lease or hire agreement.
- F. Intentionally misrepresents or withholds a material fact for determining eligibility for a public benefit and does so for the purpose of obtaining or retaining public benefits for which the person is not eligible

**State Law reference**— Theft, C.R.S. § 18-4-401.

**Sec. 17.46.040. – Shoplifting – Concealment of Goods.**

- A. If any person willfully conceals unpurchased goods, wares, or merchandise, having a value of less than \$2,000.00, owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment be on his own person or otherwise and whether on or off the premises of said store or mercantile establishment, such concealment constitutes prima facie evidence that the person intended to commit the crime of theft.
- B. It is unlawful for any person to switch, change or alter in any way the price markings on any wares or merchandise held by and offered for display or sale by any store or other mercantile establishment with the intent to avoid payment of the amount actually marked by such establishment.

**State Law reference**— Retail theft, C.R.S. § 18-4-406.

**Chapter 17.54 - TRESPASSING**

**Sec. 17.54.010. - Acts designated; prohibited.**

It is unlawful for any person to:

- A. Enter upon the land or property of another without the consent of the owner, occupant, or person having legal control thereof;
- B. Remain upon any lands or property when requested to leave by the owner, occupant, or person having legal control thereof;
- C. Enter into or upon any land or building which is posted, locked, or otherwise fenced or enclosed in such a manner that a reasonably prudent person would understand that such entry was prohibited; or
- D. Sleep or camp in any Town park or greenbelt land at any time between sunset to sunrise.
- E. Enters any motor vehicle with intent to commit a crime therein.

**State Law reference**— Trespass, C.R.S. § 18-4-506.

## VII. OFFENSES BY OR AGAINST MINORS

### Chapter 17.70 - CURFEW FOR MINORS

#### Sec. 17.70.010. - Parents' responsibility.

It is unlawful for any parent, guardian, or other person having care or custody of any child under the age of 18 years to allow or permit any such child to be or remain upon any street, alley, or other public place subsequent to the hour of 12:00 midnight, or prior to the hour of 5:00 a.m., except for lawful employment, or unless there exists a reasonable necessity therefor, or unless such child is accompanied by the parent or guardian.

#### Sec. 17.70.020. - Child's responsibility.

It is unlawful for any child under the age of 18 years to be or remain upon any street, alley, or other public place subsequent to the hour of 12:00 midnight, or prior to the hour of 5:00 a.m., except for lawful employment, or unless there exists a reasonable necessity therefor, or unless such child is accompanied by the parent or guardian.

(Code 1962, § 29.29.6; Ord. No. 395-1972, § 2; Code 1977, § 9.70.020; Ord. No. 520-1977, § 10)

### Chapter 17.72 - MINORS AND ALCOHOL

#### Sec. 17.72.010. - Definitions.

As used in this chapter, the following terms shall have the following meaning:

*Alcohol beverage* has the same meaning as its meaning under the Colorado Liquor Code.

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

*Fermented malt beverage* has the same meaning as its meaning under the Colorado Beer Code.

*Malt, vinous, and spirituous liquors* has the same meaning as its meaning under the Colorado Liquor Code.

*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.

#### Sec. 17.72.020. - Minors not permitted to possess or consume any alcohol beverage.

- A. It is unlawful for any person under 21 years of age:
1. To have possession of or to consume any ethyl alcohol or alcohol beverage in any and all places, including but not limited to public streets, alleys, roads, or highways, or inside vehicles while upon public streets, alleys, roads or highways, or on private property.
  2. To obtain or attempt to obtain alcohol beverages by misrepresentation of age or by any other method in any place where alcohol beverages are sold.
- B. A violation of any provision of subsection A of this section shall be a strict liability offense. It shall be an affirmative defense to the offenses described in subsection A above that the ethyl alcohol was possessed or consumed by a person under 21 years of age under the following circumstances:

1. The 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. This subsection shall not be construed to permit any establishment which is licensed or is required to be licensed under the Colorado Liquor Code, 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;
  2. 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 C.R.S. § 25-5-410(1)(i)(II), 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 of ethyl alcohol by weight;
  3. The possession or consumption takes place for religious purposes protected by the First Amendment of the United States Constitution; or
- C. An underage person shall be immune from criminal prosecution under this section if he or she establishes the following:
1. The underage person called 911 and reported in good faith that another underage person was in need of medical assistance due to alcohol consumption;
  2. The underage person who called 911 provided his or her name to the 911 operator;
  3. The underage person was the first person to make the 911 report; and
  4. The underage person who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance or law enforcement personnel on the scene.
- D. Prima facie evidence of a violation of subsection A of this section shall consist of:
1. Evidence that the defendant was under 21 years of age.
  2. Evidence that the defendant was under the age of 21 years and manifested any of the characteristics commonly associated with ethyl alcohol intoxication.
- E. During any trial for a violation of subsection A 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.
- F. The Town municipal court shall report convictions under this section and the failure to complete an alcohol education program to the Colorado Department of Revenue pursuant to C.R.S., § 42-2-131.
- G. Sealing of the Case.
1. Upon dismissal of a case after a completion of a deferred judgment or diversion or any other action resulting in dismissal of the case, the Town municipal court shall immediately order the case sealed and provide to the underage person and the prosecutor a copy of the order sealing the case for distribution by the appropriate party to all law enforcement agencies.
  2. Upon the expiration of one year from the date of a conviction of a charge under this section, the defendant may petition the municipal court for an order sealing the record of the Town municipal

court charge. The court shall grant such petition if the petitioner has completed court ordered treatment; paid all fines and costs; and has not been arrested for, charged with, or convicted of any felony, misdemeanor, petty offense, or criminal Town ordinance violation during the period of one year following the date of such petitioner's conviction of charges under this section, unless such offenses are dismissed, or the defendant is found not guilty of the charges.

**Sec. 17.72.030. - Responsibility of parent.**

No parent or guardian shall, knowingly or under conditions which an average parent or guardian should have knowledge of, suffer or permit any person under 21 years of age, of whom he or she may be a parent or guardian, to violate the provisions of Section 17.72.020.

**Sec. 17.72.040. - Selling alcohol beverages to minors.**

It is unlawful for any person to sell, serve, give away, dispose of, exchange or deliver, or to permit the sale, serving, giving or procuring of any alcohol beverage to or for any person under the age of 21 years.

**Sec. 17.72.050. - Signs to be posted on premises where alcohol beverages are sold.**

It shall be the duty of the person who is the proprietor or keeper of a place of business which sells, serves, or disposes of alcohol beverages to post conspicuously in his place of business a sign warning underage persons that it is illegal to attempt to purchase alcohol beverages in the form and size required by state law. Failure to so post such sign shall constitute an unlawful act.

**Sec. 17.72.070. - Selling liquor near schools prohibited.**

It is unlawful to sell or offer, or to expose for sale or gift, fermented malt beverages, or any malt, vinous, or spirituous liquors within a distance of 500 feet from any private or public school, such distance to be computed by direct measurement from the nearest property lines. Provided, however, that this prohibition shall not affect the rights of any person, firm, or corporation holding a lawful permit or license to conduct such business within the restricted area established by this section prior to the effective date of the ordinance codified in this Chapter; nor shall this prohibition prevent the renewal, upon the expiration thereof, of any license in effect at the time of the effective date of the ordinance codified in this chapter authorizing such business within the restricted area established by this section. Notwithstanding the foregoing, the Town as a local licensing authority, may grant a variance to this Section for good cause shown.

**Chapter 17.74 - PURCHASE OF FORBIDDEN ARTICLES**

**Sec. 17.74.010. - Use of false credentials.**

It shall be unlawful for any person under 21 years of age to make false statements or to furnish, present, or exhibit any fictitious or false registration card, identification card, or note or other document for any unlawful purpose, or to furnish, present, or exhibit such document or documents issued to a person other than the one presenting such document for the purpose of gaining admission to prohibited places or for the purpose of procuring the sale, gift, or delivery of prohibited articles, including beer, liquor, wine, or fermented malt beverages (3.2 beer).

**Sec. 17.74.020. - Engaging others to procure forbidden articles.**

It shall be unlawful for any person under 21 years of age to engage or utilize the services of any other person, whether for remuneration or not, to procure any article which the minor himself is forbidden by law to purchase.

**Sec. 17.74.030. - Purchasing forbidden articles for minors.**

It shall be unlawful for any person, whether for remuneration or not, to procure for any person under 21 years of age any article which the person is forbidden by law to purchase.

## **Chapter 17.76 - MARIJUANA OFFENSES**

### **Sec. 17.76.010. - Definitions.**

As used in this chapter, the following words and phrases shall have the following meanings:

*Common area* shall mean a lobby, hallway, elevator, restroom, or other area where the public is likely to gather in close proximity.

*Marijuana* shall have the same meaning as set forth in Article XVIII, § 16(2)(f) of the Colorado Constitution.

*Marijuana product* shall have the same meaning as set forth in Article XVIII, § 16(2)(k) of the Colorado Constitution.

*Minor* shall mean any person under the age of 21.

*Registry identification card* shall have the same meaning as set forth in Article XVIII, § 14(1)(g) of the Colorado Constitution, or as may be more fully defined in any applicable state law or regulation.

### **Sec. 17.76.020. - Possession and consumption of marijuana by minors; affirmative defense.**

- A. It shall be unlawful for any minor to consume, possess, display or have under that person's control any marijuana or marijuana product.
- B. It shall be an affirmative defense to a charged violation under this section that the minor: (1) on the date of the alleged offense, lawfully possessed a current registry identification card issued by the State of Colorado; and (2) possessed no more marijuana than the amount permitted by Article XVIII, § 14 of the Colorado Constitution. Such evidence shall be presented at an arraignment or at a pre-trial conference on the offense. Any minor who raises this defense waives doctor-patient privilege and confidentiality with respect to the patient registry information.
- C. An underage person shall be immune from criminal prosecution under this section if he or she establishes the following:
  1. The underage person called 911 and reported in good faith that another underage person was in need of medical assistance due to marijuana consumption;
  2. The underage person who called 911 provided his or her name to the 911 operator;
  3. The underage person was the first person to make the 911 report; and
  4. The underage person who made the 911 call remained on the scene with the medical assistance or law enforcement personnel on the scene.
- D. Prima facie evidence of a violation of subsection A of this section shall consist of:
  1. Evidence that the defendant was under 21 years of age and possessed or consumed marijuana anywhere in the Town.
  2. Evidence that the defendant was under 21 years of age and manifested any of the characteristics commonly associated with marijuana impairment while present anywhere in the Town.
- E. Sealing of the case:
  1. Upon dismissal of a case after a completion of a deferred judgment or diversion or any other action resulting in dismissal of the case, the Town municipal court shall immediately order the case sealed and provide to the underage person and the prosecutor a copy of the order sealing the case for distribution by the appropriate party to all law enforcement agencies.

2. Upon the expiration of one year from the date of a conviction of a charge under this section, the defendant may petition the municipal court for an order sealing the record of the Town municipal court charge. The court shall grant such petition if the petitioner has completed court ordered treatment and paid all fines and costs, and has not been arrested for, charged with, or convicted of any felony, misdemeanor, petty offense, or criminal Town ordinance violation during the period of one year following the date of such petitioner's conviction of charges under this section, unless such offenses are dismissed, or the defendant is found not guilty of the charges.

**Sec. 17.76.030. - Public consumption of marijuana prohibited.**

- A. It shall be unlawful for any person to consume or use marijuana in any place that is commonly or usually open to the general public, being either public or private property, and including but not limited to, parks, open space, trails, sidewalks, streets, public rights-of-way, common areas and places of business to which the public is invited in or in which the public is permitted. For purposes of this chapter, "places of business to which the public is invited in or in which the public is permitted," shall include but not be limited to, retail food production or marketing establishments, restaurants, taverns, banks, commercial establishments, theatres, waiting rooms, reception areas, meeting rooms, educational facilities, libraries, recreational facilities, health care facilities, facilities providing live music or sporting events, and public transportation facilities.
- B. It shall be unlawful for any person to consume marijuana on the premises of a medical marijuana business or retail marijuana establishment, as defined in this Code.
- C. Nothing in this section shall be construed to prohibit the use or consumption of medical marijuana or marijuana by patients or persons 21 years of age or older in a private residence in full compliance with sections 14 and 16 of Article XVIII of the Colorado Constitution and other applicable laws.

**Chapter 17.78 - TOBACCO PRODUCTS**

**Sec. 17.78.010. - Intent.**

It the intent of this chapter to protect the health, safety, and welfare of persons under the age of 21 years by prohibiting the sale of tobacco, e-cigarettes, vaporizers and similar products to persons under the age of 21.

**Sec. 17.78.020. - Definitions.**

For purposes of this chapter, the following words shall have the meaning ascribed hereafter:

*Electronic smoking device* means an electronic or battery-operated device that provides a vapor of nicotine or any other substance and the use or inhalation of which simulates smoking. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pen, electronic pipe, electronic hookah, vape pen, vape mod or any other product name or descriptor for such devices and includes any product intended for use with an electronic smoking device, including refills, cartridges, and component parts of a product whether or not marketed or sold separately. "Electronic smoking device" does not include an inhaler, nebulizer, or vaporizer that is approved by the federal Food and Drug Administration ("FDA") for the delivery of medication.

*Tobacco paraphernalia* means any item designed or marketed for the consumption, use, or preparation of a tobacco product.

*Tobacco product* means:

1. Any product containing, made, or derived from tobacco or that contains nicotine or synthetic nicotine that is intended for human consumption or is likely to be consumed whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff



or snus, but excluding any product made from or derived from tobacco and approved by the FDA for use in connection with cessation of smoking.

2. Any electronic smoking device; or
3. Any tobacco paraphernalia.

*Tobacco retailer* means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, any tobacco product.

**Sec. 17.78.030. - Prohibited sale of tobacco products.**

- A. It is unlawful for any person to sell, exchange, give, deliver, gift, loan, furnish or cause or permit to be sold, exchanged, delivered, loaned, or otherwise furnished and/or transferred any tobacco product to any person who is under the age of 21.
- B. Each tobacco product retailer shall display a warning sign having a minimum height of five inches and width of eight inches in a prominent place within the establishment, reading as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON TO SELL TOBACCO, E-CIGARETTES, AND VAPORIZER PRODUCTS TO ANY PERSON UNDER 21 YEARS OF AGE

**Sec. 17.78.040. – Possession of Drug paraphernalia.**

- A. For the purpose of this Section, 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, ingesting, inhaling or otherwise introducing a controlled substance into the human body in violation of the laws of the State. Drug paraphernalia includes, but is not limited to:

1. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;
2. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as: pipes, tubes bowls, bongs, miniature cocaine spoons, cocaine vials and objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;
3. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;
4. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances; and
5. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances.

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

1. Statements by an owner or by anyone in control of the object concerning its use;
2. The existence of any residue of marijuana on the object;

3. The existence and scope of legal uses for the object in the community; and
4. Expert testimony concerning its use.

C. It is unlawful for any person to possess drug paraphernalia if such person knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of the State.

## VIII. WEAPONS

### Chapter 17.82 - FIREARMS

#### Sec. 17.82.010. - Discharge of firearms.

- A. It shall be unlawful for any person, except a law enforcement officer in the performance of his duties, to fire or discharge within the Town a revolver or pistol of any description, or a shotgun or rifle which may be used for the explosion of cartridges or shells, or any air gun, gas-operated gun, or spring gun.
- B. Subsection (A) of this section shall not apply to persons discharging such weapons in defense of person or property, or to persons discharging such weapons in an indoor shooting range specifically approved by the Town for such purposes.

## IX. DISPOSAL OF UNCLAIMED PROPERTY

### Chapter 17.90 - UNCLAIMED PROPERTY

#### Sec. 17.90.010. - Definitions.

Unless otherwise required by context or use, words and terms shall be defined as follows:

*Chief of police* means the Chief of police or the Chief's designee.

*Defaced firearm* means any firearm the manufacturer's serial number of which, or other distinguishing number or identification mark of which, has been removed, defaced, altered, or destroyed.

*Illegal weapon* means and includes a blackjack, bomb, firearm silencer, defaced firearm, machine gun, any shotgun having a barrel or barrels less than 18 inches long or an overall length of less than 26 inches, any rifle having a barrel less than 16 inches long or an overall length of less than 26 inches, any gas gun designed for projecting gas-filled projectiles which release their contents after having been projected from the device, any projectiles designed for use in a device defined as an illegal weapon under this section, metallic knuckles, switch-blade knife, any knife that has a blade released from the handle or sheath thereof by the force of gravity or by the application of centrifugal force which blade when so released is locked in place by means of a button, springs, lever, or other device, any other weapon that is illegal to possess under the ordinances of the Town, state statute, or federal law, and any weapon in the possession of a person who is barred by law from possessing such weapon.

*Owner* means a person or entity, including a corporation, partnership, association, governmental entity other than the, or a duly authorized legal representative or successor in interest of such entity, which owns unclaimed property held by the Town.

*Unclaimed property* means and includes any tangible or intangible property, including any income or increment derived therefrom, less any lawful charges, that is held by or under the control of the Town and which has not been claimed by its owner for a period of more than three months after it became payable, distributable, or returnable; but does not include any abandoned motor vehicle, the disposition of which is otherwise provided for by law, nor any illegal weapon nor other property the possession of which is illegal under Town, state, or federal law. The term includes, but is not limited to, property found or recovered by any person and turned in by such person to the Town, which property is thereafter unclaimed by either the owner or the finder of the property.

#### Sec. 17.90.020. - Procedure for disposition of property.

- A. Prior to disposition of any unclaimed property having an estimated value of \$100.00 or more, the Chief of police shall send a written notice by certified mail, return receipt requested, to the last known address, if any, of the owner of unclaimed property. The last known address of the owner shall be the last address of the owner as shown by the records of the Town department or agency holding the property. The notice shall include a description of the property and, if known, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that if the owner fails to provide the Chief of police with a written claim for the return of the property within 90 days of the date of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.
- B. If the Chief of police receives no written claim within such 90-day claim period, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.
- C. If the Chief of police receives a written claim within such 90-day claim period, the Chief of police shall evaluate the claim and give written notice to the claimant within 90 days thereof that the claim has been accepted or denied in whole or in part. The Chief of police may investigate the validity of a claim and may request further supporting documentation from the claimant prior to disbursing or refusing to disburse the property. All such property which is money shall be delivered to the Town treasurer and be deposited in the general fund of the Town. All other such property shall be disposed of by public sale or by such other reasonable means as the Chief of police may provide after consultation with the Board of Trustees.
- D. In the event that there is more than one claimant for the same property, the Chief of police may, in the Chief of police's sole discretion, resolve such claims, or may resolve such claims by depositing the disputed property with the registry of the Town municipal Court, with the matter to be decided by the Town Municipal Judge.
- E. In the event that all claims filed are denied, the property shall become the sole property of the Town and any claim of the owner of such property shall be deemed forfeited.
- F. Any legal action filed challenging a decision of the Chief of police shall be filed pursuant to Rule 106 of the state rules of civil procedure within 90 days of such decision or shall be forever barred. If any legal action is timely filed, the property shall be disbursed by the Chief of police pursuant to the order of the court having jurisdiction over such claim.
- G. The Chief of police is authorized to establish and administer procedures for the administration and disposition of unclaimed property consistent with this Chapter.

**Sec. 17.90.030. - Custodian of property seized or deposited to Town's care.**

- A. The Chief of police shall designate one or more employees of the Town to act as custodian of property seized or taken by the police or otherwise deposited to the Town's care and shall provide a suitable location for the safekeeping of such property.
- B. It shall be the duty of any custodian of such property to keep a record of the receipt and disposition of all property coming into the custodian's care and such other information as the Chief of police may require.

**Sec. 17.90.040. - Illegal and hazardous property.**

All illegal weapons and all property the possession of which is illegal by virtue of any Town, state or federal law, burglary tools, cartridges, explosives, dangerous weapons, gambling apparatus or instruments, beer, wine, spirituous liquor or fermented malt beverages including their containers, soiled, bloody or unsanitary clothing, solids or liquids of uncertain composition, drugs or controlled substance, hypodermic syringes and needles, obscene pictures of any nature, any poisonous, noxious or deleterious solids or liquids, or any other property which reasonably might result in injury to the health or safety of the public, which reasonably appears to pose a sanitary, health or safety hazard if stored, or which might be

subject to unlawful use, shall be destroyed or turned over to the appropriate authority and shall not otherwise be subject to disposition under this chapter.

**Sec. 17.90.050. - Claim of finder.**

Notwithstanding the provisions of section 17.90.020, with respect to any personal property found or recovered by a person and turned in by such person to the Chief of police, which property is thereafter unclaimed by the owner pursuant to this Chapter, the finder of record shall be notified in writing that the finder has 90 days to claim the property found. If the finder, within such 90-day period, makes a request for the property, the property shall be given to the finder. If no such request is made, the property shall then become the sole property of the Town.

**Sec. 17.90.060. - Unauthorized removal of property.**

It is unlawful for any person to remove any property from the custody and possession of any Town custodian of property without having first obtained a release of such property from the custodian. This section shall apply to all persons irrespective of ownership or any claim or right any person may have with respect to such property.

**Chapter 17.92 - FRAUD BY CHECK**

**State Law reference—** Worthless checks, C.R.S. § 18-5-512.

**Sec. 17.92.010. - Definitions.**

As used in this chapter:

*Check* means a written, unconditional order to pay a sum certain in money, drawn on a bank, savings and loan association, industrial bank, or credit union, payable on demand and signed by the drawer. Check, for the purposes of sections 17.90.010 through 17.90.060 only, includes a negotiable order of withdrawal and a share draft.

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

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

*Insufficient funds* mean a drawer has insufficient funds with the drawee to pay a check when the drawer has no checking account, negotiable order of withdrawal account or share draft account with the drawee, or has funds in such account with the drawee in an amount less than the amount of the check plus the amount of all other checks outstanding at the time of issuance. A check dishonored for "no account" shall also be deemed to be dishonored for insufficient funds.

*Issue.* A person "issues" a check when the person makes, draws, delivers, or passes it, or causes it to be made, drawn, delivered or passed.

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

*Negotiable order of withdrawal account* means an account in a bank, savings and loan association or industrial bank, and "share draft account" means an account in a credit union on which payment of interest or dividends may be made on a deposit with respect to which the bank, savings and loan association, industrial bank, or the credit union, as the case may be, may require the depositor to give notice of an intended withdrawal not less than 30 days before the withdrawal is made, even though in practice such notice is not required and the depositor is allowed to make withdrawal by negotiable order of withdrawal or share draft.

**Sec. 17.92.020. - Issue of check with intent to defraud.**

It is unlawful to commit fraud by check. Any person, knowing he has insufficient funds with the drawee, who, with the intent to defraud, issues a check for the payment of services, wages, salary, commissions, labor, rent, money, property, or other things of value commits fraud by check. This section shall only apply where the fraudulent check was for a sum of less than \$500.00.

**Sec. 17.92.030. - Complaint defined.**

Any person having acquired rights with respect to a check which is not paid because the drawer has insufficient funds shall have standing to file a complaint for violation of section 17.90.020, whether or not the person is the payee, holder, or bearer of the check.

**Sec. 17.92.040. - Financial institutions not liable for information released to authorities.**

A bank, savings and loan association, an industrial bank, or a credit union shall not be civilly or criminally liable for releasing information relating to the drawer's account to a sheriff, undersheriff, police officer, Town attorney, Town attorney or municipal prosecutor, or authorized investigator for the Town attorney investigating or prosecuting a charge under this chapter.

**Sec. 17.92.050. - Permissible inference defined.**

This chapter does not relieve the prosecution from the necessity of establishing the required culpable mental state. However, for the purposes of this chapter, there exists a permissible inference of the issuer's knowledge of insufficient funds, except in the case of a postdated check or order, if:

- A. The issuer has no account upon which the check or order is drawn with the bank or other drawee at the time the person issues the check or order; or
- B. The issuer has insufficient funds upon deposit with the bank or other drawee to pay the check or order, on presentation within 30 days after issue.

**Chapter 17.93 - Animals**

**Sec. 17.93.010. - General provisions.**

- A. This Chapter shall be applicable to all property within the Town.
- B. For the purposes of this Chapter, the term "custodian" means any person who owns, possesses, keeps, exercises control over, maintains, harbors, cares for, transports, or sells any animal.
- C. The Board of Trustees may issue such regulations as may be necessary for the enforcement, administration, and interpretation of this Chapter, and any amendment thereto.
- D. For the purposes of this Chapter, the term "Town" shall mean the Town of Hotchkiss, Colorado, and any agent or employee thereof authorized to administer or enforce the provisions of this Chapter.
- E. For the purpose of this Chapter, the term "animal" shall include, but is not limited to, any dog, cat, bird, reptile, amphibian, poultry, and other domestic fowl and livestock.

**Sec. 17.93.020. – Vaccinations, identification and license required.**

- A. It shall be unlawful for the owner or custodian of any dog or cat to fail to display current and legible owner contact information.
- B. The term "acceptable identification" is defined as:
  - 1. Identification tag;
  - 2. A registered microchip;
  - 3. Rabies vaccine tag.
- C. It shall be unlawful for any owner or custodian to fail to obtain a rabies vaccination, with proof or verification of such, within 30 days after acquiring a dog or cat.
- D. It shall be the duty of every person owning, keeping or harboring any dog or cat over six (6) months of age, within the Town, to procure a license within the. New residents of the Town will have 30 days to secure a license. Every dog and cat shall wear a collar with attached license at all times. Licenses shall be in effect for one year from the date of issuance and shall be renewed on an annual basis.
- E. It shall be unlawful to own or have custody of any dog or cat six months of age or older, unless such dog or cat has been vaccinated against rabies by a veterinarian licensed by the State of Colorado, using a vaccine licensed by the United States Department of Agriculture.
- F. It shall be unlawful for the owner or custodian of any animal to fail or refuse to produce the certificate of rabies or vaccination upon request by an individual charged with the enforcement of this Chapter.
- G. It shall be unlawful for any person to have in its possession, or otherwise make use of a stolen, counterfeit, or forged rabies vaccination certificate or tag.
- H. Rabies and vaccination certifications are not transferable, and it shall be unlawful for any person to attach any tag or verification of such to any animal other than the animal for which such tag or verification was originally issued.

**Sec. 17.93-030. - Limit on dogs and cats.**

- A. It shall be unlawful to keep, maintain, harbor or possess, upon the premises of any one property, more than four domestic animals. Upon written request to the Chief of Police of Hotchkiss, the Chief, or its designee, may for good cause shown, grant a variance. The variance shall list the pet owners by name, the address where the pets are authorized to reside, names and identifiers as to all pets allowed to reside on the premises. If the variance is temporary, the valid dates will be clearly annotated. A copy of the variance shall be maintained on the premises available for inspection by animal control or police officers. A variance may be revoked by the Chief of Police for good cause shown.
- B. No person owning or keeping any domestic house cat shall fail to prevent the cat from damaging the property of another.
- C. The Chief of Police, or its designee, may trap and impound feral cats. For the purposes of this section, a feral cat is defined as a cat that either:
  - 1. Is born in the wild or is the offspring of an owned or feral cat and is not socialized; or
  - 2. Is a formerly owned cat that has been abandoned and is no longer socialized.

**Sec. 17.93.040. - Running at-large prohibited.**

- A. It shall be unlawful for the owner or custodian of any dog to fail to confine it or cause it to be confined to the premises of the said owner or custodian, unless the dog is under effective, immediate, and physical control of the owner or custodian by a leash, cord, chain or other restraining device, that is no longer than six feet in length. This Section shall not be construed to permit an owner or custodian to control any dog off its premises utilizing verbal command or electronic collar.
- B. Cats are considered free roaming animals, and this section shall not apply to them. Citizens are encouraged to contain cats on their own property. Citizens may be liable for property damage caused by their free roaming cats.
- C. Any dog in violation of Subsection (A) of this Section may be impounded or caused to be impounded by the Town.
- D. The Town shall keep any animals impounded, as defined by Pet Animal Care Facilities Act and relevant C.R.S., currently and as may be amended.
- E. The owner or custodian of any animal so impounded may reclaim that animal within five working days from the date impounded at the Town animal shelter, or any animal shelter the Town has contracted with, upon payment of a fee as set forth by Town regulations and any veterinary charges, as applicable. If at the expiration of five working days, the owner or custodian has not reclaimed his animal, that animal shall be relinquished to the Town.
- F. The Board of Trustees may designate specific areas for dog off-leash enclosures. Violations of this Section may not apply to persons who own, possess, or control a dog while that dog is within a designated off-leash enclosure.
- G. The Board of Trustees may develop a trap-neuter-return protocol for feral cats via Resolution. Until such Resolution is adopted, the humane treatment of feral cats is encouraged, with the goal being that feral cats populations not create a nuisance, and the community undertake an effort to spay and neuter new cats.

**Sec. 17.93.050. - Animals prohibited.**

It shall be unlawful for the owner or custodian of any animal to possess or allow that animal on the premises of cemeteries, sports fields, and non-grass playgrounds owned and maintained by the Town, or for the owner or custodian to possess or allow any animal within the premises of any special event hosted within the Town where posted any animal is not permitted, unless specifically authorized by the Board of Trustees.

**Sec. 17.93.060. - Releasing restrained animals prohibited.**

It shall be unlawful for any person to release any animal impounded or quarantined pursuant to this Chapter without permission of the Town. It shall be unlawful for any person to set any animal free of any restraint or confinement, including live traps, without consent of the owner or custodian.

**Sec. 17.93.070. - Dangerous or aggressive animals.**

It shall be unlawful for an owner or custodian to keep, harbor, or possess any aggressive animal within the Town, unless that animal is properly confined in accordance with the provisions of this Section.

1. An animal is classified as an aggressive animal if that animal bites, claws, or attempts to bite, claw, or injure any person; bites, claws, or injures another animal; in a vicious or terrorizing manner approaches any person or animal in an apparent attitude of attack, whether or not the attack is consummated or is capable of being consummated; or has acted in a manner that causes or should cause its owner or custodian to know that the animal is potentially vicious.
2. It shall be an affirmative defense to charges under this Subsection that the actual or intended victim of any attack has made an unlawful entry onto the residential dwelling structure of the animal's owner or custodian or has threatened or attacked a person or animal lawfully within said dwelling structure or has threatened or attacked an owner or custodian of the animal. The term "dwelling structure," for the purposes of this Section, shall mean any enclosed building, or portion thereof, which provides actual living facilities.
3. An aggressive animals shall be confined to the premises of the owner or custodian within the owner or custodian's residential dwelling structure. Aggressive animals may be confined outside of a residential dwelling structure only if such confinement is securely within an enclosure with secure sides and top, constructed of such material, or a construction approved by animal control, so that the animal is unable to exit on its own.
4. Any aggressive animal, or any animal reasonably believed to be aggressive, that constitutes a danger to any person or animal or that is not properly confined may be impounded by any individual tasked with enforcement of this Chapter 17.
5. Aggressive animal is reasonably believed to be vicious, and which is not properly confined in accordance with the provisions herein may be impounded if it constitutes a danger to any person or animal. The animal shall remain impounded until the completion of legal proceedings. The owner or custodian shall be responsible for costs of impoundment, and the animal may be relinquished to the Town by court order if such costs are not paid.
6. The term "proper confinement," for the purposes of this Section, shall mean the following:
  - a. While on the premises of the owner or custodian, the animal shall be confined within a dwelling structure, or within a securely fenced enclosure with fastened sides and top or with four fastened sides of no less than six feet in height. The enclosure must be permanently fastened at the bottom and be of such material and construction that the animal cannot exit the enclosure on its own. Enclosures shall be properly signed for warning.
  - b. While off the premises of the owner or custodian, the animal shall be leashed and muzzled and under the physical control of the owner or custodian at all times, unless otherwise confined within a closed vehicle.
7. In the event the Town municipal court determines that the aggressive or vicious animal poses a serious danger to the health and safety of other persons or animals, it may order the animal to be removed from the municipality or relinquished to the Town by court order. Such determination may be based upon, but is not necessarily limited to, the frequency of violations of the provisions of this Chapter by the owner or custodian of such animal, the severity of any attack or bite or terrorizing behavior by such animal, or the inability or unwillingness of the owner or custodian to properly confine such animal.

**Sec. 17.93.080. - Wild and dangerous animals.**

- A. It shall be unlawful for any person or custodian to keep or harbor any wild and dangerous animal within the Town.



- B. Wild and dangerous animals shall include, but not be limited to:
1. All venomous snakes and reptiles; non-venomous snakes with a length greater than six feet; all crocodylians;
  2. All carnivorous, non-domestic animals. The term "non-domestic animals," for the purposes of this Section, includes those animals not ordinarily domesticated so as to live and breed in a tame condition;
  3. The provisions of this Section 17.93.080 shall not be applicable to licensed circuses and carnivals, wildlife sanctuaries, nature centers, zoological parks, veterinary and rehabilitation clinics.

**Sec. 17.93.090. - Animal attacks.**

- A. Anyone, including physicians, having knowledge of any case of an attack or bite caused by any dog, cat or other animal occurring within the Hotchkiss Municipal limits shall notify the Town as soon as possible.
- B. Any animal which is known to have bitten or attacked any person, causing puncture of the skin, shall be quarantined for a period of no less than 10 days from the date of the incident. It is unlawful for any person to refuse to produce an animal for quarantine. The animal shall be quarantined and observed at any veterinarian clinic or hospital of the owner or custodian's choice, or at any animal shelter, authorized by the Town, or at the residence of the owner or custodian, provided such confinement is secure and approved by the Town. Such confinement shall be at the expense of the owner or custodian.
- C. In cases in which the attack or bite is made without provocation and the animal is believed to be vicious or aggressive as defined in the provisions of this Chapter, the animal may be impounded until conclusion of legal proceedings. Such impoundment in all cases shall be at the expense of the owner or custodian.
- D. The owner or custodian of the dog, cat or other animal shall be liable for the costs of confinement and the animal will not be returned until such costs are paid. The animal may be sold or relinquished to the Town if such costs are not paid by the owner or custodian.
- E. Any animal infected with rabies shall be relinquished to the Town.

**Sec. 17.93.100. - Cruelty to animals.**

- A. It shall be unlawful for the owner or custodian of an animal to fail or neglect to provide such animal with minimum care, or to keep such animal under conditions which are overcrowded, unclean, or unhealthy.
  1. For the purposes of this Chapter, the term "minimum care" means care sufficient to preserve the health and well-being of an animal, considering the species, breed, and type of animal. With the exception of emergencies or circumstances beyond the reasonable control of the owner or custodian, minimum care shall include, but is not limited to, the following:
    - a. Providing food of sufficient quantity and quality to allow for normal growth or maintenance of the animal's body weight.
    - b. Tethering or confinement with access to a receptacle of consistently filled clean water, which shall not include access to snow or ice.

- c. Access to adequate protection from wind, rain, snow, or sun, and in the case of a domestic animal such protection may include a barn, doghouse, or other enclosed structure with adequate bedding to protect from cold and dampness.
  2. For the purposes of this Chapter, the term "overcrowded" shall mean an enclosure with an area no less than the square of the sum of the length of the animal in inches, nose to tail, plus six inches, multiplied by the number of animals confined.
- B. It shall be unlawful for any person to beat, cruelly ill-treat, overload, over-work or otherwise abuse any animal.
- C. It shall be unlawful for any person to cause, sponsor, arrange, hold, encourage, and abet a fight between animals. A person is in violation of this Section if such person:
  1. Is knowingly present at such a fight;
  2. Owns, trains, transports, possesses, or equips such an animal with the intent that the animal will be engaged in such a fight; or
  3. Knowingly allows such a fight to occur on any property owned or controlled by such a person.
- D. It shall be unlawful for any person to expose, administer, or provide any food, medicine, or other ingestible substance to any animal without the express consent of that animal's owner or custodian.
- E. It shall be unlawful for any person to expose any known poisonous or hazardous substance to any animal, including such substance when mixed with food, so that a reasonable person would know or should know that such substance is likely to attract and adversely affect an animal; provided, however, that this Subsection does not apply to the lawful removal of pests.
- F. An officer may impound any animal which is reasonably believed to be abandoned or otherwise subject to the provisions of this Section. Any and all costs associated with the impoundment and necessary care of such animals shall be borne by the owner or custodian.

**Sec.17-93-110. - Unattended animal in vehicle.**

- A. It shall be unlawful for the owner or custodian of any animal to leave such animal unattended or confined within a vehicle subject to conditions which are dangerous or detrimental to the health of the animal.
- B. It shall be unlawful for the owner or custodian of any animal to subject the animal to hot or cold temperatures which are, or the owner or custodian should reasonably know are, dangerous or detrimental to the health of the animal.

**Sec. 17-93-120. - Abandonment.**

- A. It shall be unlawful for any person to abandon any animal or cause an animal to be abandoned. For the purposes of this Section, the term "abandonment" means the leaving unattended of any animal by a person previously having care, custody, or control of that animal.
- B. An officer of the Town is authorized to impound any animal which appears to be abandoned, regardless of whether such animal is on public or private property.

1. An officer may only impound an animal recovered from private property following a period of posting a conspicuous notice, at the place where the animal appears to be abandoned, which shall indicate that the animal appears to be abandoned and that it may be impounded.
2. An officer has the authority to impound an animal after 48 hours and following the posting of two notices within such period. However, an officer is not prohibited from immediately impounding any animal which appears to have been neglected, mistreated, or left unattended in a vehicle.

**Sec. 17-93-130. - Nuisance.**

- A. It shall be unlawful for the owner or custodian of any animal to allow such animal to become a nuisance or to create a nuisance within the Town. For the provisions of this Chapter, the term "nuisance" means an egregious, second, or repetitive violation of any provision of this Chapter.
- B. The Town may abate any such nuisance by an action in a court of proper jurisdiction or otherwise in accordance with the law. The Town may undertake emergency abatement procedures, including the trapping and removal of animals, in accordance with its nuisance provisions when such nuisance constitutes an immediate health or safety hazard.

**Sec. 17-93-140. - Unreasonable animal noise.**

It shall be unlawful for the owner or custodian of any animal to allow or fail to prevent such animal to produce, create, or engage in any unreasonable disturbance by excessive or continued barking, howling, screeching, or other noise, regardless of whether such animal is within the boundaries of the owner or custodian's premises.

**Sec. 17-93-150. - Animal excrement.**

- A. It shall be unlawful for the owner or custodian of any animal to leave excrement upon any public property, or upon any private property absent the consent of that property owner, which is not immediately removed by the owner or custodian of such animal.
- B. Any barn, pen, corral, coop, yard, or other enclosure or such appurtenance in which any animal, livestock, or fowl shall be kept, or any other place within the Town in which manure or other discharges of animal, livestock, or fowl shall accumulate, and which is maintained in any unsanitary condition, allowing an offensive odor to escape, allowing discharges to the storm drainage system of the Town, or which attracts insects or rodents, is deemed a nuisance and prohibited.

**Sec. 17-93-160. Farm livestock.**

- A. It shall be unlawful to keep livestock, as defined by C.R.S. § 35-41-100.3, within the Town, except that one such animal may be kept for each one acre of premises area, on premises in excess of five acres. Notwithstanding the foregoing, premises devoted to agricultural use, including the keeping of livestock, at the time annexed to the Town may continue to be so used unless such use is discontinued for a period of six months. No such agricultural use may be materially enlarged from the extent existing at the time annexed.
- B. It shall be unlawful to keep, harbor, or maintain roosters, cocks, and other male poultry within the Town.

- C. All premises, pens, corrals, structures and fenced areas where livestock is kept shall be kept in a clean, dry and sanitary condition.
- D. All premises, pens, corrals, structures and fenced areas where livestock is kept shall be maintained so that the use of adjacent property is not adversely affected due to unreasonable odors, noise, insects or other detrimental condition or nuisance created as a result of the keeping of livestock.
- E. All fences or enclosures shall be constantly adequately maintained by the owner of the livestock containment property so as to keep the livestock within such property.
- F. It shall be unlawful for anyone to herd or drive livestock through the streets without having said animal under control as required by this Chapter, except that stockmen may drive stock through the Town.

**Sec. 17-93-170. Police dogs.**

- A. Police dogs, while on duty, or under authorized training with or for the Hotchkiss Police Department or other law enforcement agencies shall not be subject to the provisions of this Chapter.
- B. It shall be unlawful for any person to hit, kick, strike, beat, injure, disable, or kill any police dog on duty or under training, or to tease or torment any police dog in a manner likely to provoke a violent response or to interfere with the use of such police dog while such dog is being used by the Hotchkiss Police Department or other law enforcement agency for law enforcement duties or while under training.

**Sec. 17-93-180 Impoundment of Animals.**

- A. The Board of Trustees shall have the right to establish a dog pound for this Town to be operated by Town personnel, or at its election, may, subject to the approval of the Board, contract with a public or private person or organization for the operation of a dog pound for and on behalf of the Town. Any such pound shall be constructed and maintained according to the requirements and specifications of the Colorado Bureau of Animal Protection established pursuant to Colorado Revised Statutes 35-42-101, as amended.
- B. If an animal is impounded, it shall be the duty of the Police Department to immediately institute proceedings in the Municipal Court on behalf of the Town against the owner, possessor or keeper of such animal if known, charging the owner, possessor or keeper with a violation of the appropriate section of this Chapter 17.93.
- C. As soon as practical after date of impoundment, the Town shall send by regular mail a written notice of such impoundment to the owner, possessor or keeper of such animal if the address of such person be known. If the owner, possessor, or keeper of such animal is not known, then a notice of impoundment shall be posted at the Town Hall and in a conspicuous place in the Town of Hotchkiss, Colorado, for at least five (5) consecutive days. Whether the notice herein be provided by mail or be posted, it shall contain a brief description of the animal, including its type, color, breed, sex and approximate age and advise of notice that the animal must be retrieved within the five (5) days, to avoid the immediate destruction of such animal.

**Sec. 17-93-190. Procedure for Release of Impounded Dog, and Disposal.**

- A. If a complaint has been filed in the Municipal Court of the Town against the owner, possessor or keeper of any impounded animal for a violation of this Article, then such dog shall not be released from impoundment except on order from a Municipal Judge. In addition to any penalties which may

be provided for in this Code for the a violation of this section, the Municipal Judge shall require such owner, possessor or keeper to pay the incurred fees and penalties and shall have the authority, upon making a finding that such animal constitutes a nuisance or that such animal is a vicious or that such animal constitutes a clear and present danger to the citizens or other pets of the community, to order that such animal be destroyed in a humane manner.

- B. If a complaint has not been filed in Municipal Court because the owner, possessor or keeper of an impounded animal is not known or cannot be located and such dog has not been claimed within five (5) days from the date of impoundment, the animal may be disposed of in any humane manner. However, no animal shall be disposed of, unless it has a contagious disease or is harmful to the public health and safety, without one public announcement of its impoundment. The announcement shall contain a brief description of the animal including its species, color, breed, sex, and approximate age.

**Sec. 17-93-180. Interference with animal shelter employees.**

- A. It shall be unlawful for any person to interfere with, molest, or hinder any Town employee in the discharge of its duty provided in this Chapter 17-93.
- B. It shall be unlawful for any person to knowingly make, convey, or cause to be imparted or conveyed, false statements, or to furnish, present, or exhibit any fictitious or false documentation pertaining to any ordinance in this Chapter 17-93 or to any individual tasked with enforcement of the same.
- C. It shall be unlawful for any person to fail to obey a lawful order of an Officer if such failure interferes with or hinders such Officer in the discharge of its official duties. For the purposes of this Subsection, the term "lawful order" shall include only such orders that relate directly to matters of substantial importance in the discharge of the official duties of Officers.

**Sec. 17-94.110. Possession of Drug Paraphernalia.**

- A. For the purpose of this Section, 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, ingesting, inhaling or otherwise introducing a controlled substance into the human body in violation of this Section or the laws of the State. Drug paraphernalia includes, but is not limited to:

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

- 2. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as: pipes, tubes bowls, bongs, miniature cocaine spoons, cocaine vials and objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

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

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

5. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances.
- B. In determining whether an object is drug paraphernalia, the Municipal Court, in its discretion, may consider, in addition to all other relevant factors, the following:
1. Statements by an owner or by anyone in control of the object concerning its use;
  2. The existence of any residue of marijuana on the object;
  3. The existence and scope of legal uses for the object in the community; and
  4. Expert testimony concerning its use.
- C. It is unlawful for any person to possess drug paraphernalia if such person knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of this Section or the laws of the State of Colorado.

#### **Sec. 17-95-110. Use of Recreation Vehicles.**

##### **A. Definitions.**

1. Authorized use means a use upon any land within the Town which has been authorized and approved in accordance with this Code.

2. Motorized recreation vehicle means a vehicle manufactured primarily for sport and recreation, utilizing, tracks or two (2), three (3), four (4) or more wheels such as a motorbike, motorcycle, all terrain vehicle, four-wheel drive sport truck or snowmobile. Many such vehicles are not licensed for use on public streets and highways and are generally used by their owners for recreation purposes only. Motorized recreation vehicle shall not include Town-operated emergency vehicles.

##### **B. Unlawful Use.**

1. It shall be unlawful for any person to drive, ride upon or engage in the recreational use of any motorized recreation vehicle within the Town upon any private lands, other than his or her own, unless the use thereon has been specifically authorized by the Town, or unless written permission has been secured from the owner of the land allowing such use and such written permission is in the possession of the person so using the land. For the purposes of this Section, the maintenance, repair, transportation and other uses of such motorized recreation vehicles for purposes other than recreational use within the municipal limits of the Town shall not be unauthorized.

2. The use of any motorized recreation vehicle upon any public lands shall be limited to authorized travel upon the streets and roads of the Town only, and further conditioned upon such vehicle being properly licensed or otherwise properly permitted for such use.

#### **Sec. 17-96-110 Littering and dumping prohibited.**

No person may dump, litter, deposit or dispose of trash upon public or private property within the Town.

#### **Sec. 17.96-120 Accumulation on private property.**

No person shall permit an accumulation of trash or solid waste upon his or her own private residential or business property for more than fourteen (14) days. Useful, but unsightly, materials may be stored only upon the rear areas of lots or be concealed from public view. Nothing in this article shall be

construed to require the concealment of stock in trade or merchandise held for sale at retail in areas otherwise properly secured and maintained in a manner pleasing to the general public.

**Sec. 17.96.130 Duty to remove solid waste.**

No person shall dump, deposit or leave any ashes, wastepaper, trash, garbage, or any other solid waste or refuse of any kind within the limits of the Town or on any property owned by the Town, wherever situate, except at such a solid waste disposal site as may be designated by the Town Council, nor shall any person cause any such ashes, wastepaper, trash, garbage or solid waste or refuse of any kind or type to accumulate for any period of time in excess of fourteen (14) days without proper removal thereof to such sites designated by the Town Council, or to any other properly designated solid waste disposal site within or without the Town.

**Sec. 17.97. 110 Damaging public or private property.**

Any person who damages, mars, destroys, paints, smears or defaces public or private property or who participates with others in marring, damaging, destroying, painting, smearing or defacing of public or private property within the Town without express permission of the owner or governing body having charge of the property may, upon conviction, be punished as provided in the general penalty of this Code.

**Sec. 17.97.120 Suspension of fine.**

No fine levied under this Chapter shall be suspended or revoked, except upon the condition that the public or private property damaged shall be restored to its original condition, or substantially restored to its original condition by the person or persons who shall be so convicted.

**Sec. 17.97.130 Civil liability.**

Nothing contained in this Chapter shall be deemed to affect the right of owners of property to recover damages to property in a civil suit.

**Sec. 17.97.140 Parental control.**

Any parent or parents who shall suffer or permit his, her or their child to commit any act prohibited in Section 17.97.110 shall, upon conviction, be guilty of a misdemeanor and shall be subject to punishment as provided in the general penalty of this Code.

**Sec. 17.98.110 Complicity.**

A person is legally accountable and may be charged as principal for the behavior of another constituting a violation of this Code if, with the intent to promote or facilitate the commission of the violation, he or she aids, abets or advises the other person in planning or committing the violation.

**Sec. 17.98.120 Attempted Violations.**

A. A person commits criminal attempt if, acting with the kind of culpability otherwise required for commission of a violation of this Code, he or she engages in conduct constituting a substantial step toward the commission of the violation. A substantial step is any conduct, whether act, omission or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the violation. Factual or legal impossibility of committing the violation is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be, nor is it a defense that the crime attempted was actually perpetrated by the accused.

B. A person who engages in conduct intending to aid another to commit a violation commits criminal attempt if the conduct would establish his or her complicity under Section 17.98.110 of this

Code were the violation committed by the other person, even if the other is not guilty of committing or attempting the violation.

C. It is an affirmative defense to a charge under this Section that the defendant abandoned his or her effort to commit the crime or otherwise prevented its commission under circumstances manifesting the complete and voluntary renunciation of his or her criminal intent. D. Attempted violation under this Section is a lesser included violation of every violation of the provisions of this Title.

#### **Sec. 17.98.130 Conspiracy.**

A. A person commits conspiracy to commit a violation of this Code if, with the intent to promote or facilitate its commission, he or she agrees with another person or persons that they, or one (1) or more of them, will engage in conduct which constitutes a violation of this Code or an attempt to commit a violation of this Code, or he or she agrees to aid the other person or persons in the planning or commission of a violation of this Code or of an attempt to commit such violation of this Code.

B. No person may be convicted of conspiracy to commit a violation of this Code, unless an overt act in pursuance of that conspiracy is proved to have been done by him or her or by a person with whom he or she conspired.

#### **Sec. 17.98.140. Accessory to Ordinance Violation.**

It shall be unlawful for any person to be an accessory to an ordinance violation. A person is an accessory to an ordinance violation if, with intent to hinder, delay or prevent the discovery, detection, apprehension, prosecution, conviction or punishment of another for the commission of an ordinance violation, that person renders assistance to such other person. For the purpose of this Section, render assistance means to:

A. Harbor or conceal such person;

B. Warn such other person of impending discovery or apprehension, except that this does not apply to a warning given in an effort to bring such other person into compliance with the law;

C. Provide such other person with money, transportation, weapon, disguise or other thing to be used in avoiding discovery or apprehension;

D. By force, intimidation or deception, obstruct anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such other person; or

E. Conceal, destroy or alter, or assist in concealing, destroying or altering, any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such other person.

#### **Sec. 17.99.110. Abandoned, Junked or Wrecked Vehicles.**

A. Definitions.

1. Abandoned vehicle means:

- a. Any vehicle standing upon any portion of a street or highway right-of-way, or in a public parking lot for more than seventy-two (72) hours unless a dated notice has been conspicuously affixed to the vehicle by its driver or owner indicating an intention to remove the vehicle, or unless such driver or owner shall have notified the Police Department his or her intention to remove the



vehicle within seventy-two hours of such notification. If the driver or the owner of the vehicle for which the notification was given does not remove the vehicle within seventy-two (72) hours of such notification, then the vehicle shall be deemed abandoned.

- b. Any vehicle left unattended on private property for more than twenty-four (24) hours without the consent of the owner or lessee of such private property or his legally authorized agent; or any vehicle parked on private property in violation of parking restrictions set by the private property owner in signs conspicuously posted on the private property and which signs contain the property owner's restrictions on parking and the name and telephone number of the towing operator by whom such vehicle will be removed; or, any vehicle left unattended on private property in such manner as to impede or obstruct access to or from the private property by the owner, lessee or authorized agent of such private property or guests and invitees of such owner, lessee or authorized agent.
  - c. Any vehicle placed in an impound lot at the request of its owner or the owner's agent or an officer of Police Department which is not lawfully removed from the impound lot in accordance with an agreement between the Town and the owner or the owner's agent, or within seventy-two (72) hours of the time the Police Department notifies the owner or agent that the vehicle is available for release upon payment of any applicable charges or fees. If the Police Department requested the impoundment of the vehicle, the provisions of this Chapter governing the public tow of a vehicle shall apply as of the time the vehicle is deemed to have been abandoned. In all other situations, the provisions of this Chapter governing the private tow of a vehicle shall apply as of the time the vehicle is deemed to have been abandoned.
2. Impound lot means a parcel of real property which is owned or leased by a government or operator at which vehicles are stored under appropriate protection.
  3. Junked vehicle includes any vehicle partially dismantled, wrecked or discarded, or any vehicle which is found to be inoperable, without valid licensing tags.
  4. Operator means a person or entity licensed by the Colorado Public Utilities Commission and the Colorado Department of Revenue to tow and store abandoned vehicles.
  5. Person means any person, firm, partnership, association, corporation, company or organization authorized to do business in the State or otherwise authorized to hold title to a vehicle.
  6. Police Department means the Hotchkiss Police Department and the officers thereof.
  7. Private property includes all other real property within the municipal limits of the Town not designated in this Chapter as a street or highway or other way or easement.
  8. Private tow means any tow of a vehicle not requested by the Police Department.
  9. Public property means any real property having its title, ownership, use or possession held by the federal government, the state of Colorado, any county of this state, the Town, or any other governmental entity within this state.

10. Public tow means any tow of a vehicle requested by the Police Department.
  11. Streets and highways means the entire designated right-of-way belonging to the Town, County or State between property lines within the corporate limits of the Town, whether or not the property is being presently maintained as a roadway by the Town.
  12. Vehicle means a machine propelled by power designed to travel along the ground by use of wheels, treads, runners or slide to transport persons or property or pull machinery and includes, but is not limited to, automobiles, airplanes, trucks, trailers, motorcycles, motor scooters, tractors and wagons.
  13. Wrecked vehicle means a vehicle which has been made inoperable by accident or dismantlement.
- B. On Public Property. It is unlawful for any person who owns or is in possession of any vehicle to allow said vehicle to be left wrecked, junked or abandoned on any street, highway, public easement or way within the municipal limits of the Town.
- C. On Private Property. It shall be unlawful for any person who is the owner or in possession of any vehicle to permit or allow any junked, discarded or partially wrecked, or abandoned vehicle, or any parts thereof, to remain on any private property within the municipal limits of the Town; except that this Section shall not apply when any such vehicle, or parts thereof, are maintained in a lawful manner in an enclosed building, or when the maintenance thereof is in a properly zoned district and is necessary to the operation of a business enterprise on said private property, or when such vehicle, or parts thereof, are maintained in an appropriate storage place or depository maintained for the impoundment of said vehicles by the Town, County or State officials, or when a special permit is granted upon application to and approval by the Town Board of Trustees.

**Sec. 17.99.120. Removal – Public Tow.**

- A. The Police Department is authorized to remove or have removed any vehicle from public or private property under any of the following circumstances and to cause such vehicle to be impounded at an impound lot:
1. If an abandoned, junked or wrecked vehicle is upon a street or highway and is considered to be an obstruction to traffic or proper highway maintenance, or if a vehicle is in a fire lane, emergency lane or access so as to constitute an obstruction or hazard to traffic, road maintenance, public safety, fire hydrants or emergency services, or a limitation on the usual access to any public or private property, then the Marshal's Office shall cause the vehicle to be removed immediately to a properly designated place without the officer or anyone assisting in the removal of the vehicle being liable for any damage to the vehicle occasioned by its removal.
  2. If an abandoned, junked or wrecked vehicle is found upon a street, highway or public parking lot, but not in such a manner as to be an obstruction, then the officer shall cause a report of the vehicle to be entered in the Marshal's log, shall proceed with the notice requirements hereinafter described, and may thereupon cause the vehicle to be removed to a properly designated place no sooner than twenty-four (24) hours from the date and time of discovery.

3. When the vehicle is parked or left standing upon any area or portion of a public street in violation of or contrary to a parking limitation or prohibition, provided that such area or portion of such public street has been posted with an official sign giving notice both of such limitation or prohibition and of the fact that such area or portion of such street is a tow-away zone.
4. When the driver of the vehicle has been taken into custody by the Marshal's Office other law enforcement official and the vehicle is thereby left unattended upon any street, highway, public right-of-way or restricted parking area.
5. When the driver of a vehicle is reasonably suspected of the unlawful use or misuse of license plates or a license permit, or the vehicle is being driven or is parked on public property without license plates or license permit, or the vehicle is being driven or parked on public property with an invalid or expired license plate or license permit.
6. When the driver of a vehicle refuses to display a valid operator's license or CDL license or does not have such operator's or CDL license in his or her possession or is operating a vehicle at a time when his or her operator's or CDL license has been denied, cancelled, suspended or revoked by the State.
7. When the driver of a vehicle, or the vehicle which the driver is then driving, is reasonably suspected of involvement in a hit-and-run accident.
8. When the vehicle is reasonably suspected of being a stolen vehicle or containing parts that are stolen.
9. When the vehicle is reasonably suspected of being evidence of a felony or misdemeanor, or when the motor vehicle is necessary for the preservation of evidence of the commission of any crime.
10. Any vehicle involved in a traffic accident which would be left unattended unless towed.

- B. In removing or causing to be removed from public property a vehicle deemed abandoned, wrecked or junked, the police department shall use and employ those procedures for removal, notification and disposition of such vehicles as set forth in the Colorado Abandoned Vehicle Act, Title 42, Article 4, C.R.S., as said Act now exists or may be hereafter amended.

**Sec. 17.99.130. Removal – Private Tow.**

In removing or causing to be removed from private property a vehicle deemed abandoned, wrecked or junked, the operator shall use and employ those procedures for removal, notification and sale of such vehicles as set forth in the Colorado Abandoned Vehicle Act, Title 42, Article 4, C.R.S., as said Act now exists or may be hereafter amended.

**Sec. 17.99.140. Special Permits.**

The Board of Trustees is authorized to issue, upon application by any person, a special permit authorizing a proper use of parts of any vehicle for landscape design, building decor or any other use deemed proper and necessary by the Board of Trustees. In the event any person shall make said application to the Board of Trustees, it shall be accompanied by photographs, design layout or such other evidence specifying the use and nature of the vehicle for which a permit is being requested. No permit shall be issued by the Board of Trustees until clear and convincing evidence is received that

the use of the vehicle in question will not cause any unsightly appearance, nuisance or in any other way appear improper in character within the neighborhood wherein the permit is sought. Additionally, the permit, if issued by the Board of Trustees, may contain such limitations and conditions as deemed necessary as to length factors deemed proper.

**Sec. 17.99.150. Enforcement.**

It shall be deemed a separate violation of this Chapter for each day that any vehicle is found to be in violation hereof. It shall be the duty of the Police Department, and any other law enforcement officers so authorized within the Town, to enforce this Chapter, both with respect to the removal and disposition of vehicles in violation of this Chapter, and also by issuing a written summons and complaint to the person believed responsible for the violation.

**Sec. 17.100.110. Adoption.**

Pursuant to Parts 1 and 2 of Article 16 of Title 31 and Part 4 of Article 15 of Title 30, C.R.S., there is hereby adopted by reference Articles I and II, inclusive, of the 2003 edition of the Model Traffic Code, promulgated and published as such by the Colorado Department of Transportation, Safety and Traffic Engineering Branch, 4201 East Arkansas Avenue, EP 700., Denver, Colorado 80222. The subject matter of the Model Traffic Code relates primarily to comprehensive traffic control regulations of the Town. The purpose of this Chapter and the code adopted herein is to provide a system of traffic regulations consistent with state law and generally conforming to similar regulations throughout the State and the nation. Three (3) copies of the Model Traffic Code adopted herein are now filed in the office of the Town Clerk and may be inspected during regular business hours.

Sec. 17.100.120. Application. This Chapter shall apply to every street, alley, sidewalk area, driveway, park and to every other public way or public place, public parking area, either within or outside the corporate limits of this municipality, the use of which this municipality has jurisdiction and authority to regulate. The provisions of Sections 1401, 1402, 1409(3) and 1413 of the adopted Model Traffic Code, respectively concerning reckless driving, careless driving, compulsory insurance and eluding a police officer, shall apply not only to public places and ways but also throughout this municipality.

Sec. 17.100.130 Amendments. The adopted code shall be amended to read as follows:

- A. Section 103(2)(b) is hereby amended to read in its entirety as follows: "(b) For provisions of sections 1401, 1402, 1409(3) and 1413 of this Code which shall apply upon streets and highways and elsewhere throughout the jurisdiction."
- B. Section 106 is hereby amended to read in its entirety as follows: "106. Restricted right to use highways.

"(1) The Public Works Director may prohibit the operation of vehicles upon any such highway or impose restrictions as to the weight of vehicles to be operated upon any such highway whenever the Public Works Director finds that any said highway by reason of deterioration, rain, snow, or other climatic conditions may be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced. Such restrictions shall be effective when signs giving notice thereof are erected upon the highways or portion of any such highway, and, when such devices are in place, no driver shall disobey the instructions or directions thereof.

"(2) The Public Works Director may prohibit the operation of trucks and commercial vehicles or construction vehicles on designated highways or may impose limitations as to the weight, size or type thereof, which prohibitions and limitations shall be designated by appropriate signs placed on such highways. Such restrictions shall be effective when signs giving notice thereof are erected upon the highways or portion of any highway, and, when such devices are in place, no driver shall disobey the instructions or directions thereof.

"(3) The Public Works Director for the purpose of general construction which may impact a roadway to the extent that closure is reasonably necessary to avoid creation of a public safety hazard, or for the purpose of road construction and maintenance, temporarily may close to all vehicular traffic any highway or portion thereof, and shall in conjunction with any such road closure, establish appropriate detours or provide for an alternative routing of the traffic affected. Such temporary closing of the highway or portion thereof and the routing of traffic along other roads shall not become effective until official traffic control devices are erected giving notice of the restrictions, and, when such devices are in place, no driver shall disobey the instructions or directions thereof.

"(4) The Public Works Director may provide for the temporary closing to vehicular traffic of any portion of a highway during a specified period of the day for the purpose of celebrations, parades and special local events or civic functions for which a valid permit has been issued by the Town allowing the event to occupy the public way, and when in the opinion of the Public Works Director such temporary closing is necessary for the safety and protection of persons who are to use that portion of the highway during the temporary closing. Such temporary closing of the highway or portion thereof shall not become effective until official traffic control devices are erected giving notice of the restrictions, and, when such devices are in place, no driver shall disobey the instructions or directions thereof. "

(5) The Public Works Director may prohibit the operation of all vehicles, except authorized emergency and maintenance vehicles, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways. Such restrictions shall be effective when signs giving notice thereof are erected upon the highway or portion of any highway, and, when such devices are in place, no driver shall disobey the instructions or directions thereof.

"(6) Conviction of a violation of any provision of this Section shall be punished by a fine of one hundred dollars (\$100.00)."

- C. Section 108(3) is hereby amended to read in its entirety as follows:
- a. "108. Public officers to obey provisions - exceptions for emergency vehicles.
  - b. "(3) The exemptions granted in paragraphs (b) to (d) of subsection (2) of this section to an authorized emergency vehicle shall apply only when such vehicle is making use of audible and/or visual signals meeting the requirements of section 213, and the exemption granted in paragraph (a) of subsection (2) of this section shall apply only when such vehicle is making use of visual signals meeting the requirements of section 213 unless using such visual signals would cause an obstruction to the normal flow of traffic; except that an authorized emergency vehicle being operated as a police vehicle while in actual pursuit of a suspected violator of any provision of this part need not display or make use of audible or visual signals so long as such pursuit is being made to obtain verification of or evidence of the guilt of the suspected violator. Nothing in this section "(1) Whenever a penalty assessment notice for a traffic offense is issued pursuant to section 1701, the penalty assessment notice which shall be served upon the defendant by the peace officer shall contain the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, a citation of the statute or ordinance alleged to have been violated, a brief description of the traffic offense, the date and approximate location thereof, the amount of the penalty prescribed for such traffic infraction, the amount of the surcharge thereon pursuant to section 24-4.2-109, C.R.S., the number of points, if any, prescribed for such traffic infraction pursuant to section 42-2-127, C.R.S., and the date the penalty assessment notice is served on the defendant; shall direct the defendant to appear in a specified court at a specified time and place in the event such penalty and surcharge thereon is not paid; shall be signed by the peace officer; and shall contain a place for the defendant to elect to execute a signed acknowledgement of liability and an agreement to pay the penalty prescribed and surcharge thereon within twenty days, as well as such other information as may be

required by law to constitute such penalty assessment notice to be a summons and complaint, should the prescribed penalty and surcharge thereon not be paid within the time allowed set by ordinance or court order.

- c. "(2) One copy of said penalty assessment notice shall be served upon the defendant by the peace officer and one copy sent to the municipal court and such other copies sent as may be required by rule or regulation of the motor vehicle division to govern the internal administration of this article between the motor vehicle division and the Colorado State Patrol.
- d. "(3) The time specified in the summons portion of said penalty assessment notice must be at least thirty days but not more than ninety days after the date of such penalty assessment notice is served, unless the defendant shall demand an earlier hearing.
- e. "(4) The place specified in the summons portion of said penalty assessment notice must be a municipal court or county court within the municipality or county in which the traffic infraction is alleged to have been committed. "
- f. "(5) Whenever the defendant refuses to accept service of the penalty assessment notice, tender of such notice by the peace officer to the defendant shall constitute service thereof upon the defendant."

#### 17.100.140 Penalties.

The following penalties shall be imposed against any person violating the provisions stated or adopted in this Chapter:

- A. Every person convicted of a violation of any provision stated or adopted in this Chapter shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), except for violations of Section 1101, Speed Limits, where the speed exceeds nineteen (19) miles over the posted speed limit (six-point charge), Section 1105, Speed Contests, Section 1401, Reckless Driving, Section 1402, Careless Driving, Section 1409, Compulsory Insurance, Section 1413, Eluding or Attempting to Elude a Police Officer, and Section 1903, Passing a School Bus, of the Model Traffic Code.
- B. Every person convicted of a violation of Section 1101, Speed Limits, where the speed exceeds nineteen (19) miles over the posted speed limit (six-point charge), Section 1105, Speed Contests, Section 1401, Reckless Driving, Section 1402, Careless Driving, Section 1409, Compulsory Insurance, Section 1413, Eluding or Attempting to Elude a Police Officer, or Section 1903, Passing a School Bus, of the Model Traffic Code as adopted by the Town shall be punished by a fine not to exceed one thousand dollars (\$1,000.00), or by imprisonment not to exceed three hundred and sixty four (364) days, or by both such fine and imprisonment.

#### 17.100.150 Trials. A defendant shall be entitled to a jury trial on any offense charged under this Chapter if:

- A. The offense is punishable by a jail sentence as provided in this Chapter; and
- B. Within ten (10) days after arraignment, the defendant files a written jury demand and at the same time tenders a jury fee of twenty-five dollars (\$25.00), unless the jury fee is waived by the judge because of the indigence of the defendant. All other offenses under this Chapter, including offenses where the defendant has not timely perfected the right to a jury trial under subsection B above, shall be tried to the court with the Municipal Judge as the fact finder.