

ORDINANCE 2010-09

AN ORDINANCE OF THE CITY OF FRUITA, COLORADO AMENDING TITLE 9 OF THE FRUITA MUNICIPAL CODE CONCERNING PUBLIC PEACE, MORALS AND WELFARE

**BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA,
COLORADO:**

Section 1. That Chapter 9.01 of the Fruita Municipal Code, concerning public peace, morals and welfare is hereby repealed and re-enacted to read as follows:

9.01.001 ABANDONED ICEBOXES AND REFRIGERATORS. Any person, firm or corporation who intentionally, knowingly, negligently, or recklessly stores, maintains, abandons, or places any unused and unattended icebox or refrigerator at any place or location whatsoever within the City which is accessible to children, without first removing the door or the locking device from said icebox or refrigerator commits a Non-criminal Municipal Offense.

9.01.002 ASSAULT. It is unlawful for any person to intentionally, knowingly, or recklessly assault another person, beat, strike, injure or inflict bodily injury to another person, or with criminal negligence, the person causes bodily injury to another person by means of a deadly weapon; except in an amateur or professional contest of athletic skill. "Assault" as used in this Section means an attempt, coupled with a present ability, to commit a bodily injury upon the person of another. "Bodily injury" means physical pain, illness or any impairment of physical or mental condition. Any violation of this Section shall constitute a Class A municipal offense.

9.01.004 CURFEW HOURS AND PLACES APPLICABLE - UNLAWFUL ACTS. Any minor under the age of 16 years who knowingly frequents, loiters, loafs or plays upon any sidewalk, street, alley, vacant or unoccupied lot or in or upon any stairways or steps of a business or unoccupied building in the City between the hours of 9:30 p.m. and 5:00 a.m. commits a Non-criminal Municipal Offense, unless such minor is accompanied by his or her parent, guardian, or other person having control and custody of such minor.

9.01.005 CURFEW PARENT OR GUARDIAN RESPONSIBILITY - UNLAWFUL ACTS. Any parent, guardian or any other person having custody or care of any minor under the age of 16 years who knowingly allows or permits such minor to loiter, ramble, play upon or frequent any of the streets, alleys, sidewalks or any public places of the City, within the times prohibited by Section 9.01.004 of this Chapter, commits a Non-criminal Municipal Offense, unless such parent, guardian or other person having legal care or custody of such minor accompanies the minor.

9.01.006 PERMISSION REQUIRED TO DEAL WITH MINORS. Any person, firm or corporation licensed as a pawnshop, junk dealer or secondhand dealer who knowingly buys, purchases, exchanges, stores or handles any article of merchandise from a minor child without the written authorization for such sale or exchange of such merchandise from the parents or guardian of such minor commits a Class A municipal offense.

9.01.007 CRIMINAL MISCHIEF.

- A. Any person who intentionally, knowingly, negligently, or recklessly damages, injures, defaces, destroys, removes; or causes, aids in, or permits the damaging, injuring, defacing, destruction or removal of real property or improvements thereto, or moveable or personal property of another in the course of a single criminal episode when the aggregate damage to the real or personal property is less than \$1,000.00 commits a Class A Municipal Offense.
- B. For the purposes of this Section, property shall be deemed to be injured or damaged when physical effort or the expenditure of monies is required to restore the property to its previous condition.
- C. For the purposes of this Section, property shall be deemed to belong to “another” if anyone other than the Defendant has a possessory or proprietary interest therein.

9.01.008 KEEPING DISORDERLY HOUSE. It shall be unlawful for any person to knowingly, intentionally, or recklessly keep any disorderly house, which term is defined as any structure and/or adjoining property or both which is used, owned, kept or controlled by such person within this City or within which any drinking of alcohol by a person under the age of twenty-one (21), use of unlawful controlled substances, quarreling, fighting or riotous or disorderly conduct is permitted, allowed, occasioned, encouraged or suffered commits a Class A municipal offense.

9.01.009 DISTURBING THE PEACE. Any Person who commits the offense of disturbing the peace as described in this Section commits a Class A municipal offense. A person commits disturbing the peace if he or she:

- A. Causes to be produced or permits unreasonably loud or unusual noises which seriously inconvenience other persons in the area, including, but not limited to, the use of televisions, radios, phonographs and amplifiers.
- B. Permits another to commit an act of disturbing the peace as described in this section in or upon any premises owned, possessed or under his management or control when it is in his power to prevent such an act.

9.01.010 DISORDERLY CONDUCT. Any person who commits disorderly conduct as described in this Section commits a Class A Municipal Offense. A person commits disorderly conduct if he or she intentionally, knowingly or recklessly:

- A. Makes a coarse and obviously offensive utterance, gesture or display in a public place, and the utterance, gesture or display by its very nature tends to incite an immediate breach of the peace.
- B. Fights with another in a public place.
- C. Without authorization, alters or befouls public property or the property of another so as to create a hazardous, unhealthy or physically offensive condition.
- D. Causes the likelihood or harm or serious inconvenience by failing to obey any lawful order or command for dispersal by a police officer or firefighter where either three or more persons are committing disorderly conduct, or in the immediate vicinity of

firefighter operations being conducted.

E. Urinates in public.

9.01.011 EMERGENCY EQUIPMENT. It shall be unlawful for any person to carry or use upon any vehicle other than Fire Department, Police Department, Ambulance, or other duly authorized emergency or maintenance vehicles, any siren, whistle or red and/or blue lights similar to that used on official Police Department or Fire Protection District vehicles of this city or any other law enforcement agency or fire department of the State. Any person who violates this Section commits a Class A Municipal Offense.

9.01.012 EXPLODING, BLASTING; PERMISSION REQUIRED. It shall be unlawful for any person within this city to explode or set off any explosive material without permission in writing from the City Manager, which permission shall limit the time and place of such firing and shall be subject to be revoked by the City Council at any time, provided the content of this section shall not be construed to apply to the firing of nail or staple guns used in the construction trade or law enforcement officers in the lawful discharge of their duties. Any person who violates this Section commits a Class A Municipal Offense.

9.01.013 FALSE REPORT OF A CRIME. A person commits the Class A Municipal Offense of False Reporting to Authorities, if:

- A. He knowingly causes a false alarm of fire or other emergency to be transmitted to or within an official or volunteer fire department, ambulance service, or any other governmental agency which deals with emergencies involving danger to life or property; or
- B. He makes a report or knowingly causes the transmission of a report to law enforcement authorities of a crime or other incident within their official concern when he knows it did not occur; or
- C. He or she makes a report or knowingly causes the transmission of a report to law enforcement authorities pretending to furnish information relating to an offense or other incident within their official concern when he or she knows that he or she has no such information or knows that the information is false.
- D. He or she knowingly provides false identifying information to law enforcement authorities.

For the purpose of this section, “identifying information” means a person’s name, address, birth date, social security number, or driver’s license or Colorado identification number.

9.01.015 SALE, DISPLAY OF MERCHANDISE. It shall be unlawful for any person, firm or corporation to place in or upon any public sidewalk, street, alley or public right-of-way any sign, advertisement or any article of merchandise offered, exhibited or advertised for sale or any other thing tending to interfere, obstruct, or encroach upon the use of such public sidewalk, street, alley, or public right-of-way or which renders same less commodious or convenient for public use, except when directed by the City Council that such display or sale of merchandise or any other thing may be permitted as a part of a coordinated promotional effort involving a majority of the retail business establishments in the immediate shopping area and display and/or sale of

merchandise on a public right-of-way is prohibited except that, when directed by the City Council, such display or sale may be permitted for a maximum of seven days when proposed and conducted as a part of a coordinated promotional effort involving a majority of the retail business establishments within the city. Any person who violates this Section commits a Non-criminal Municipal Offense.

9.01.017 PUBLIC INDECENCY. It shall be unlawful to commit a lewd or indecent act in the city. Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public; in which such conduct is likely to cause affront or alarm to the other person violates this ordinance. Any person who violates any subsection below of this Section commits a Class A Municipal Offense.

- A. An act of sexual intercourse; or
- B. An act of deviate sexual intercourse; or
- C. A lewd exposure of the body, done with the intent to arouse or to satisfy the sexual desire of any person; or
- D. A lewd fondling or caress of one's own body or of the body of another person; or
- E. Intentional exposure of the external genitalia or the perineum or the anus or the buttocks the pubes or the breast of any person to the view of any person; or
- F. Aids, suffers or permits in the doing of any of the herein above described offenses.
- G. "Public masturbation" defined as the real or simulated touching, rubbing, or otherwise stimulating of a person's own genitals or pubic area for the purpose of sexual gratification or arousal of the person, regardless of whether the genitals or pubic area is exposed or covered.

9.01.018 OBSTRUCTING A PEACE OFFICER, FIREFIGHTER, EMERGENCY MEDICAL SERVICES PROVIDER, RESCUE SPECIALIST, OR VOLUNTEER.

- A. A person commits obstructing a peace officer, firefighter, emergency medical services provider, rescue specialist, or volunteer when, by using or threatening to use violence, force, physical interference, or an obstacle, such person knowingly obstructs, impairs, or hinders the enforcement of the penal law or the preservation of the peace by a peace officer, acting under color of his or her official authority; knowingly obstructs, impairs, or hinders the prevention, control, or abatement of fire by a firefighter, acting under the color of his or her official authority; knowingly obstructs, impairs, or hinders the administration of medical treatment or emergency assistance by an emergency medical service provider or rescue specialist, acting under color of his or her official authority; or knowingly obstructs, impairs, or hinders the administration of emergency care or emergency assistance by a volunteer, acting in good faith to render such care or assistance without compensation at the place of an emergency or accident.
- B. To assure that animals used in law enforcement or fire prevention activities are protected from harm, a person commits obstructing a peace officer or firefighter when, by using or

threatening to use violence, force, physical interference, or an obstacle, he or she knowingly obstructs, impairs, or hinders any such animal.

- C. It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, if he was acting under color of his official authority as defined in the in section 18-8-103 (2) of the Colorado Revised Statutes.
- D. A violation of the sections above is a Class A Municipal Offense.
- E. For the purposes of this section, unless the context otherwise requires:
 - 1. “Emergency medical service provider” means a member of a public or private emergency medical service agency, whether that person is a volunteer or receives compensation for services rendered as such emergency medical service provider.
 - 2. “Rescue Specialist” means a member of a public or private rescue agency, whether that person is a volunteer or receives compensation for services rendered as such rescue specialist.
 - 3. “Peace officer” means any police officer in uniform, or if out of uniform, one who has identified himself by exhibiting his credentials as a member of the police department to the actor, or one whom the actor knew was a City peace officer at the time of the alleged offense.

9.01.019 ESCAPE. Any person in the custody of a police officer or a person duly empowered with police authority who knowingly escapes or attempts to escape from such custody commits a Class A Municipal Offense.

9.01.021 REFUSING TO AID A PEACE OFFICER. A person, 18 years of age or older, commits a Class A Municipal Offense when, upon command by a person known to him to be a peace officer, he unreasonably refuses or fails to aid the peace officer in effecting or securing an arrest or preventing the commission by another of any offense.

9.01.023 RESISTING ARREST.

- A. A person commits resisting arrest if he or she knowingly prevents or attempts to prevent a peace officer, acting under color of his or her official authority, from effecting an arrest of the actor or another, by:
 - 1. Using or threatening to use physical force or violence against the peace officer or another; or
 - 2. Using any other means which creates a substantial risk of causing bodily injury to the peace officer or another.
- B. It is no defense to a prosecution under this section that the peace officer was attempting to make an arrest which, in fact was unlawful, if they were acting under color of their official authority, and in attempting to make the arrest they were not resorting to unreasonable or excessive force giving rise to the right of self-defense. A peace officer

acts "under color of his official authority" when, in the regular course of assigned duties, they are called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made by them.

- C. The term "peace officer" as used in this section means a peace officer in uniform or, if out of uniform, who has identified themselves by exhibiting their credentials as such peace officer to the person whose arrest is attempted.
- D. Any person who violates this Section commits a Class A Municipal Offense.

9.01.024 THEFT.

- A. A person commits theft when he or she knowingly obtains or exercises control over anything of value of another without authorization or by threat or deception, and:
 - 1. Intends to deprive the other person permanently of the use or benefit of the thing of value; or
 - 2. Knowingly uses, conceals, or abandons a thing of value in such a manner as to deprive the other person permanently of its use or benefit; or
 - 3. Uses, conceals, or abandons a thing of value and intending that such use, concealment, or abandonment will deprive the other person permanently of its use and benefit; or
 - 4. Demands any consideration to which he is not legally entitled as a condition of restoring the thing of value to the other person; or
 - 5. Any person who knowingly transfers a label or other designation of price from one item to another or who alters the same with intent to purchase such item at a lesser cost.
- B. For the purposes of this subsection, a thing of value is that of "another" if any one other than the Defendant has a possessory or proprietary interest therein.
- C. Theft is a Class A Municipal Offense if the value of the thing involved is less than \$1,000.00.

For the purposes of this subsection, evidence of the retail value of the thing involved shall be prima facie evidence of the value of the thing involved. Evidence offered to prove retail value may include, but shall not be limited to, affixed labels and tags, signs, shelf tags, and notices. In addition, if any person willfully conceals unpurchased goods, wares or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment be on his or her own person or otherwise and whether on or off the premises of said store or mercantile establishment, such concealment shall constitute prima facie evidence that the person intended to commit the crime of theft.

9.01.025 CRIMINAL TAMPERING. A person commits the crime of criminal tampering if, with intent:

- A. To cause interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection, he or she tampers with property of a utility or institution; or
- B. If he or she tampers with property of another with intent to cause injury, inconvenience, or annoyance to that person or to another or if they knowingly make an unauthorized connection with property of a utility; or
- C. Connects any pipe, tube, stopcock, wire, cord, socket, motor, or other instrument or contrivance with any main, service pipe, or other medium conducting or supplying gas, water, or electricity to any building without the knowledge and consent of the person supplying such gas, water, or electricity; or
- D. In a manner alters, obstructs, or interferes with the action of any meter provided for measuring or registering the quantity of gas, water, or electricity passing through said meter without the knowledge and consent of the person owning said meter.

Nothing in this section shall be construed to apply to any licensed electrical or plumbing contractor while in performing usual and ordinary services in accordance with recognized customs and standards. Violations of this Section shall constitute a Class A Municipal Offense.

9.01.026 THROWING STONES - OTHER MISSILES. It is unlawful for any person to knowingly throw, shoot or project any stone or other missile at:

- A. Any person or animal, in such a manner as may cause injury or damage, or
- B. A building or other public or private property of another without the consent of the owner whether occupied or unoccupied, or
- C. At a vehicle, whether moving or not.
- D. A person who commits a violation of this section commits a Class A Municipal Offense.

9.01.027 CRIMINAL TRESPASS. A person commits a Class A Municipal Offense of criminal trespass if he or she intentionally, knowingly, or willfully:

- A. Unlawfully enters or remains in or upon the commons area of a hotel, motel, condominium, business, school, or apartment building; or
- B. Unlawfully enters or remains in a premise or motor vehicle of another; or
- C. Unlawfully enters or remains in or upon the premises of another which are enclosed in a manner designed to exclude intruders or are fenced; or
- D. As used in this Section, “premises” means real property, buildings, and other improvements thereon, and the steams banks and beds of any nonnavigable fresh water streams flowing through such real property.
- E. A person “Unlawfully enters or remains in” or upon “premises” when he or she is not

licensed, invited, or otherwise privileged to do so. A person who, regardless of his or her intent, enters or remains in or upon premises which are at the time open to the public does so with license or privilege unless he or she defies a lawful order not to enter or remain, personally communicated to him or her by the owner of the premises or some other authorized person in charge or control thereof. License or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders does so with license and privilege unless notice against trespass is personally communicated to him or her by the owner of the land or some other authorized person, or notice forbidding entry is given by posting with signs at intervals not more than 440 yards or, if there is readily identifiable entrance to the land by posting with signs at such entrance to the private land or the forbidden part of the land.

9.01.028 MEETING - PUBLIC. It shall be unlawful to hold any outdoor meeting on public property, to which more than ten persons are expected, invited or permitted to attend and addressed by one or more speakers, or conduct a processional parade unless a permit for such event has been issued by the city. Applications for said permit shall be made to the City Manager or his designated agent at least five (5) days prior to the event with a copy sent to the Lower Valley Fire Department, Police Department, Parks and Recreation Department, and Public Works Department and shall contain the following information:

- A. A description of the event.
- B. The day and hour of the event.
- C. Location of the event. Should the event be a parade, the designated route for a parade in the city of Fruita shall be established by the Chief of Police.
- D. A reasonable and good faith approximation of the number of persons expected to attend the event.
- E. A reasonable and good faith approximation of the number and types of units expected to participate in the parade.
- F. The name and addresses of the person(s) sponsoring the event.

Upon compliance with this section, a permit shall be issued by the City Manager or his agent. Any person who knowingly violates this Section commits a Class B Municipal Offense.

9.01.029 DUTY TO CLEAN SIDEWALKS. The owner, or his agent, or the occupant of any premises or property in the city shall maintain those sidewalks adjoining such premises or property in a condition free from snow, ice, mud, dirt, rubbish and filth. Any accumulation of snow and ice shall be removed from such sidewalk into the street within twenty-four (24) hours after every snowfall. Any person who violates this Section commits a Non-criminal Municipal Offense.

9.01.030 INTERFERENCE WITH STAFF, FACULTY OR STUDENTS OF EDUCATIONAL INSTITUTION.

- A. No person shall, on or near the premises or facilities of any educational institution, willfully deny to students, school officials, employees, and invitees:
1. Lawful freedom of movement on the premises;
 2. Lawful use of the property or facilities of the institution;
 3. The right of lawful ingress and egress to the institution's physical facilities.
- B. No person shall, on the premises of any educational institution or at or in any building or other facility being used by any educational institution, knowingly interfere or impede the staff or faculty of such institution in the lawful performance of their duties or knowingly interfere or impede a student of the institution in the lawful pursuit of his or her education or activities.
- C. No person shall willfully refuse or fail to leave the property of or any building or other facility used by any educational institution upon being requested to do so by the chief administrative officer, his designee charged with maintaining order on the school premises and in its facilities, if such person is committing, threatens to commit, or incites others to commit any act which would disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures, or functions of the institution.
- D. A person shall not knowingly make or convey to another person a credible threat to cause death or to cause bodily injury with a deadly weapon against:
1. A person the actor knows or believes to be a student, school official, or employee of an educational institution; or
 2. An invitee who is on the premises of an educational institution.
- For the purposes of this subsection (D), "credible threat" means a threat or physical action that would cause a reasonable person to be in fear of bodily injury with a deadly weapon or death.
- E. Any violation of this Section constitutes a Class A Municipal Offense.
- F. It shall be an affirmative defense that the defendant was exercising his right to lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute between an educational institution and its employees, any contractor or subcontractor, or any employee thereof.

9.01.033 POLICE ALARMS, LICENSE REQUIRED. It shall be unlawful for any person, firm or corporation to install or maintain police alarm systems in the city of Fruita without having obtained a license to do so. Nothing in this section shall be construed to apply to persons, firms or corporations that sell but neither install nor maintain alarm systems, or to individuals

who either purchase and install their own systems or design and install their own systems. Any person who violates this Section commits a Non-criminal Municipal Offense

9.01.034 SOLICITATION.

A. Definitions:

1. “Canvasser” is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of (1) attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue or candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause, or (2) distributing a Non-commercial flyer.
2. “Commercial flyer” is any printed or written material, any sample or device, circular, leaflet, pamphlet, newspaper, magazine, publication, booklet, handbill, or other printed or otherwise reproduced original or copy of any manner of literature or paper containing a written or pictorial message that is predominantly and essentially an advertisement and is distributed or circulated for advertising purposes, or for the direct or indirect private financial gain of any person or entity so engaged as advertiser or distributor, except that a telephone directory or a newspaper of general circulation in the City published primarily for the purpose of disseminating news shall not be considered a Commercial flyer.
3. “Non-commercial flyer” is any printed or written material, any sample or device, circular, leaflet, pamphlet, newspaper, magazine, booklet, handbill, or any other printed or otherwise reproduced original or copy of any manner of literature or paper containing a written or pictorial message that is distributed or circulated solely for non-profit purposes.
4. “Hawker or Peddler” is a person who attempts to make personal contact with a resident, for the primary purpose of attempting to sell a good or service. A “Peddler” does NOT include a person who distributes handbills or flyers for a commercial purpose, advertising an event, activity, good or service that is offered to the resident for purchase at a location away from the residence or at a time different from the time of visit. Such a person is a “Solicitor”.
5. “Solicitor” is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of (1) attempting to obtain a donation to a particular patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, charitable, political or religious purpose, even if incidental to such purpose there is the sale of some good or service, or (2) distributing a Commercial flyer.

B. Registration requirements and fees.

1. No person shall act as a hawker, peddler or as a solicitor within the City without first registering with the City in accordance with this subsection. A Canvasser is

not required to register but any Canvasser may do so for the purpose of reassuring the City residents of the Canvasser's good faith.

2. Any person or organization required to register under this chapter shall provide the following information:
 - a. The name, physical description and photograph of each person required to register. In lieu of this information, a driver's license, state identification card, passport, or other government-issued identification card (issued by a government within the United States) containing this information may be provided, and a photocopy taken.
 - b. The permanent and (if any) local address of the organization or business to be represented by a hawker, peddler, solicitor or canvasser.
 - c. The permanent and (if any) local address of each person acting as a hawker, peddler, solicitor or canvasser.
 - d. A brief description of the proposed activity related to this registration (copies of literature to be distributed may be substituted for this description at the option of the applicant).
 - e. The motor vehicle make, model, year, color, vehicle identification number and state license plate number of any vehicle which will be used by each person. A copy of the vehicle registration may be used to provide this information.
 - f. If registering as a hawker or peddler.
 - g. The name and permanent address of the business offering the event, activity, good or service (i.e., the peddler's principal).
 - h. A copy of the principal's sales tax license as issued by the State of Colorado and/or the City of Fruita.
 - i. The web address for this organization, person, or group (or other address) where residents having subsequent questions can go for more information.
 - j. No fee for: A peddler acting on behalf of a merchant otherwise licensed to do business within the City; a solicitor (including a commercial solicitor advertising an event, activity, good or service for purchase at a location away from the residence); or a canvasser.
- C. A solicitor or canvasser leaving handbills or other commercial flyers about the community shall observe the following regulations:
 1. No handbill or flyer shall be left at, or attached to any sign, utility pole, transit shelter or other structure within the public right-of-way.

2. No handbill or flyer shall be left at, or attached to any privately owned property in a manner that causes damage to such private owned property.
3. No handbill or flyer shall be left on, or attached to any parked motor vehicle.
4. Any person observed distributing handbills or flyers shall be required to identify himself/herself to the police or code enforcement officer. This is for the purpose of knowing the likely identity of the perpetrator if the City receives a complaint of damage caused to private property during the distribution of handbills or flyers.

D. No peddler, Hawker or Solicitor shall:

1. Enter or remain upon any private property where the property is clearly posted in the front yard a sign visible from the right-of-way (public or private), upon any door or entrance way leading into the residence or dwelling at which guests would normally enter, indicating a prohibition against peddling, hawking and/or soliciting.
2. Use or attempt to use any entrance other than the front or main entrance to the dwelling, or step from the sidewalk or indicated walkway (where one exists) leading from the right-of-way to the front or main entrance, except by express invitation of the resident or occupant of the property.
3. Remove any yard sign, door or entrance sign that gives notice to such person that the resident or occupant does not invite visitors.

E. Exceptions

1. It shall be an affirmative defense to any violation of this section the peddler, hawker, or solicitor has an express invitation from the resident or occupant of a dwelling allowing him/her to enter upon any property whether posted or not.
2. These subsections shall not apply to a federal, state or local government employee or a public utility employee in the performance of his/her duty for his/her employer.

F. Any person who violates any of the subsections of this Section commits a Class A Municipal Offense.

9.01.036 SELLING OF MERCHANDISE.

- A. It shall be unlawful for any person, firm or corporation to sell or offer for sale merchandise except from a permanent structure which complies with all building ordinances and codes applicable to such structure at a fixed location on premises appropriately zoned to retail sales to which the seller has the right of occupancy by ownership, lease or signed permit. Goods may be displayed or merchandised from other than the primary approved facility so long as the goods remain on the premises of the primary approved facility to which the seller has the right of occupancy and which is zoned for such sales.

- B. Sales from a non-permanent structure may be authorized by the City Manager for a period not to exceed seven days. Such sales will still be subject to the sales licensing requirements of the city.
- C. Any person who violates any of the provisions of this Section commits a Non-criminal Municipal Offense.

9.01.037 LOITERING.

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

Acts constituting loitering designated. A person commits the offense of loitering if he or she:

- A. Loiters for the purpose of begging and soliciting funds, goods or property for themselves; or
- B. Loiters for the purpose of unlawful gambling with cards, dice, or other gambling paraphernalia; or
- C. With the intent to interfere with or disrupt the school program or with intent to interfere with or endanger schoolchildren, loiters in a school building or on school grounds or within one -hundred (100) feet of school grounds when persons under the age of eighteen (18) are present in the building or on the grounds, not having any reason or relationship involving custody of, or responsibility for, a pupil or any other specific, legitimate reason for being there, and having been asked to leave by a school administrator or his representative or by a peace officer.
- D. It shall be an affirmative defense that the defendant's acts were lawful and he was exercising his rights of lawful assembly as part of peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise.
- E. Any person who violates any provision contained in the section commits a Class A Municipal Offense.

9.01.038 THEFT OF RENTAL PROPERTY. It shall be unlawful to commit theft of rental property in the City of Fruita. A person commits theft of rental property when he or she:

- A. Obtains the temporary use of personal property of another, which is available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the personal property; or
- B. Having lawfully obtained possession for temporary use of the personal property of another which is available only for hire, knowingly fails to reveal the whereabouts of or to return the property to the owner thereof or his or her representative or to the person from whom he or she has received it within seventy-two (72) hours after the time at which he or she agreed to return it.

- C. Theft of rental property is a Class A Municipal Offense where the value of the property is less than one thousand dollars (\$1,000.00).

9.01.039 THEFT BY RECEIVING. A person commits theft by receiving when he receives, retains, loans money by pawn or pledge on, or disposes of anything of value of another, knowing or believing that said thing of value has been stolen, and when he intends to deprive the lawful owner permanently of the use or benefit of the thing of value. Where the value of the thing involved is less than \$1,000.00, theft by receiving is a Class A Municipal Offense.

9.01.040 HARASSMENT. It shall be unlawful to commit harassment in the City of Fruita.

- A. A person commits harassment if, with intent to harass, annoy or alarm another person, he or she:
1. Strikes, shoves, kicks or otherwise touches a person or subjects him or her to physical contact; or
 2. In a public place directs obscene language or makes an obscene gesture to or at another person; or
 3. Follows a person in or about a public place or solicits them to take rides in automobiles; or
 4. Initiates communication with a person, anonymously or otherwise by telephone, telephone network, data network, text message, instant message, computer, computer network or computer system in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion or proposal by telephone, computer, computer network, or computer system that is obscene; or
 5. Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or
 6. Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or
 7. Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.
- B. As used in this section, unless the context otherwise requires, "obscene" means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.

- C. Any act prohibited by subparagraph A-4 above 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. Any person who violates this Section commits a Class A Municipal Offense.

9.01.042 OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY. An individual, corporation or business commits an offense if without legal privilege such individual, corporation or business intentionally, knowingly, or recklessly:

- A. Obstructs a highway, street, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway, or hallway to which the public or a substantial group of the public has access or any other place used for the passage of persons, vehicles, or conveyances, whether the obstruction arises from his acts alone or from his acts and the acts of others; or
- B. Disobeys a reasonable request or order to move issued by a person the individual, corporation or business knows to be a peace officer, a firefighter, or a person with authority to control the use of the premises, to prevent obstruction of a highway or passageway or to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.
- C. Obstructs the entrance into, or exit from, a funeral or funeral site, or knowingly obstructs a highway or other passageway where a funeral procession is taking place.
- D. If a person requested or ordered by a police officer to move in accordance with the above subsections of this section does not leave the area and moves elsewhere thereafter either alone or with others so as to again cause an obstruction of a highway, street, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway, or hallway to which the public or a substantial group of the public has access or any other place used for the passage of persons, vehicles, or conveyances commits a violation of the applicable subsection(s) of this section without further request or order by the police officer to move.
- E. For the purpose of this section:
 - 1. “Obstruct” means to render impassable or to render passage unreasonably inconvenient or hazardous.
 - 2. “Funeral” means the ceremonies, rituals, and memorial services held in connection with the burial, cremation, or memorial of a deceased person, including the assembly and dispersal of the mourners.
 - 3. “Funeral site” means a church, synagogue, mosque, funeral home, mortuary, cemetery, gravesite, mausoleum, or other place where a funeral is conducted.
- F. A violation of any subsection of this section is a Class A Municipal Offense.

Section 2: That Chapter 9.02 of the Fruita Municipal Code, concerning noise is hereby repealed and re-enacted to read as follows:

9.02.001 UNNECESSARY AND UNUSUALLY LOUD NOISE.

- A. Prohibition during certain hours. It shall be unlawful for any person to make, continue or cause to be made or continued any unnecessary, unusually loud or unusual noise between the hours of nine o'clock (9:00) p.m. and six o'clock (6:00) a.m., which either annoys, injures or endangers the comfort, repose, health or safety of other persons. For the purpose of this ordinance, a member of the Police Department of the City of Fruita is empowered to make a prima facie determination whether such noise constitutes a public nuisance.
- B. Near schools and hospitals. It shall be unlawful for any person by himself or in the operation of any instrument, machine or vehicle to make any unnecessary noise within one hundred fifty feet (150') of any hospital or other institution reserved for the sick, or any school during school hours.
- C. Exemptions. Persons actively engaged in lawful employment or other lawful pursuits in the area described in subsection (B) of this section, shall be exempt from the provisions of this section.
- D. Excessive noise. No person operating or occupying a motor vehicle on any street, highway, alley, parking lot, or driveway, either public or private property, shall operate or permit the operation of any sound amplification system, including but not limited to, any radio, tape player, compact disc player, loud speaker, or any other electrical devise used for the amplification of sound from within the motor vehicle so that the sound is plainly audible.
 - 1. For the purpose of this section, "plainly audible" means any sound which clearly can be heard, by unimpaired auditory senses based on a direct line of sight of fifty (50) or more feet, however, words or phrases need not be discernable and said sound shall include bass reverberation.
 - 2. Prohibitions contained in this section shall not be applicable to emergency or public safety vehicles, vehicles owned and operated by the City or any utility company, for sound emitted unavoidably during job-related operation, or any motor vehicle used in an authorized public activity for which a permit has been granted by the appropriate agency of the City.
- E. Any person who knowingly violates any of the provisions of this Section commits a Class A Municipal Offense.

9.02.002 USE OF SOUND AMPLIFICATION DEVICES.

- A. License required. It shall be unlawful to maintain or operate any loud speaker or amplifier connected with any radio, phonograph, microphone, or other device by which sounds are magnified and made heard over any public street or public place without having first secured a permit therefor.

- B. Fee. The fee for licenses to be granted under this chapter shall be as established by a resolution of the City Council. The payment of the designated fees shall be for each day of usage of the equipment, as specified in the permit.
- C. Application. Any person, firm or corporation desiring a license for the use or operation of such device, shall file an application therefor with the City Clerk, upon a form provided by him, setting forth the name and address of the applicant, the name of the owner of such device, the date upon which it is intended to be used, and such other information as may be prescribed.
- D. Issuance of License. Such license shall be issued upon the payment of a license fee, as above provided, to the City Clerk, and shall permit the use of such device subject to reasonable terms and conditions only upon the date(s) specified on such license and no other.
- F. EXCLUSIONS. This section shall not apply to radios in homes or in private vehicles, when the same are operated in such manner as not to be audible at a distance of fifty feet from such vehicle, nor to noise devices, bands, or other musical devices used in any public parade or procession which is operated under a permit in accordance with the ordinance of the city.

Any person who violates any of the provisions of this Section commits a Non-criminal Municipal Offense.

Section 3: That Chapter 9.03 of the Fruita Municipal Code, concerning Parks and Public Grounds is hereby repealed and re-enacted to read as follows:

9.03.001 PARKS AND PUBLIC GROUNDS; REQUIREMENTS CONCERNING USE OF GROUNDS AND FACILITIES. Each person, firm or organization using city parks, public parks, or other public grounds shall confine all fires only to fireplaces provided, shall clean up all debris, extinguish all fires when such fires are permitted, and leave the premises in good order, and the facilities in a neat and sanitary condition. Any person who violates this Section commits a Class A Municipal Offense.

9.03.002 PARKS AND PUBLIC GROUNDS, PROHIBITED ACTS. It is unlawful for any person, firm or organization using city parks to either perform or permit to be performed any of the following acts:

- A. Willfully mark, deface, disfigure, injure, tamper with, or displace or remove any building, bridges, tables, benches, fireplaces, railing, paving or paving material, waterlines or other public utilities or parts or appurtenance thereof, signs, notices or placards whether temporary or permanent monuments, stakes, posts, or other boundary markers, or other structures or equipment, facilities or park property or appurtenance whatsoever, either real or personal;
- B. Throw, discharge, or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, tributary, storm sewer, or drain flowing into such waters, any

substance, matter or thing, liquid or solid, which will or may result in the pollution of said waters;

- C. Bring in or dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage, refuse, or other trash. No such refuse or trash shall be placed in any waters in or contiguous to any parks, or left anywhere on the grounds thereof, but shall be placed in the proper receptacles where these are provided. Where receptacles are not so provided, all such rubbish or waste shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere.
- D. Violate any rule for the use of the park, made or approved by the City Council.
- E. Prevent any person from using any park, or any of its facilities, or interfere with such use in compliance with this chapter and the rules applicable to such use;
- F. Swim, bathe, or wade in any waters or waterway in or adjacent to any park, except in such waters and at such places as are provided therefor, and in compliance with such regulations as are set forth in this chapter or may be hereafter adopted.
- G. Serve or consume beverages from glass containers.
- H. Any person who knowingly violates subsection (A) - (F) of this Section commits a Class A Municipal Offense. Any person who violates subsections (G) of this Section commits a Non-criminal Municipal Offense.

9.03.003 HOURS OF OPERATION. City parks, exclusive of the swimming pool, shall be opened daily to the public during the hours of six a.m. to eleven p.m. of any one day; and it shall be unlawful for any person, or persons, other than city personal conducting city business therein, to occupy or be present in said park during any hours in which the park is not open to the public by the City Manager or Police Chief in the City Managers absence, at any time and for any interval of time, either temporarily or at regular or stated intervals. Hours for public swimming shall be as established by resolution of the City Council, except that the swimming pool manager may close the swimming pool during inclement weather, where unsanitary water conditions exist, or for any special event. Any person who violates any of the provisions of this Section commits a Class A Municipal Offense.

9.03.004 REQUIRED PERMIT - GROUP ACTIVITY. Whenever any group, association or organization desires to use said park facilities for a particular purpose, including, but not limited to parties or theatrical or entertainment performances, a representative of said group, association or organization shall first obtain a permit from the City Manager for such purposes. The City Council may adopt an application form to be used by the City Manager for such situations. The City Manager shall grant the application if it appears that the group association or organization meets all other conditions contained in the application. The application may contain a requirement for an indemnity bond to protect the city from any liability of any kind or character and to protect city property from damage, and shall contain such a provision if the swimming pool is to be utilized by said group. Any person who violates any of the provisions of this Section commits a Non-criminal Municipal Offense.

9.03.005 OTHER REGULATIONS.

- A. Animals. It is unlawful to bring any dangerous animals into any park, and it is unlawful to permit any dog to be in any park unless such dog is on a leash not more than six feet long. Hoofed animals may be allowed pursuant to a parade/assembly/block party application.
- B. Special Events. It shall be unlawful for any person to bring a dog or other domesticated or exotic pet, excluding service dogs, into the venue of any festival or other special event located in any City park, public right-of-way, or other public grounds when prohibited by posted signs. When pets are prohibited, the City shall post signs at entrances to the event area and other designated locations based on the size of the perimeter of the event area clearly stating “No Pets Allowed”. Signs shall be posted at all designated locations at a reasonable time prior to the official start time of such event and such signs shall remain posted until the official closure of the event.
- C. Sales. It is unlawful for any person, other than employees and officials of the city acting on behalf of the city, to vend, sell, peddle or offer for sale any commodity or article within any park, without first having obtained a license for same.
- D. Smoking. It is unlawful for any person to smoke within the swimming pool area.
- E. Penalty. Any person who violates sections (A) and (B) commits a Class A Municipal Offense. Any person who violates any other provision(s) of this section commits a Non-criminal Municipal Offense.

9.03.006 SWIMMING POOL RATES. Rates for swimming pool will be as established annually by resolution of the City Council.

9.03.007 VIOLATION - PENALTY. Any person convicted of violating any provision of this chapter shall be punished as provided in Chapter 1.28.020 of this code.

Section 4: That Chapter 9.04 of the Fruita Municipal Code, concerning Gambling is hereby repealed.

Section 5: That Chapter 9.05 of the Fruita Municipal Code, concerning Weapons is hereby repealed and re-enacted to read as follows:

9.05.001 UNLAWFULLY CARRYING A CONCEALED WEAPON-UNLAWFUL POSSESSION OR PROHIBITED USE OF WEAPONS. A person commits a Class A Municipal Offense if such person knowingly and unlawfully:

- A. Carries a knife concealed on or about his or her person; or
- B. Carries a firearm concealed on or about his or her person; or
- C. Without legal authority, carries, brings, or has in such person’s possession a firearm or any explosive, incendiary, dangerous device, or any deadly weapon on the property of or within any building in which the chambers, galleries, or offices of any municipal offices of the City of Fruita are located, or in which a hearing or meeting is being or is to be

conducted, or which the official office of any member, officer, or employee of the City of Fruita is located; or

- D. Has in his or her possession a firearm while the person is under the influence of intoxicating liquor.
- E. Aims, swings, or throws a throwing star or nunchaku as defined in this section at another person, or knowingly possesses a throwing star or nunchaku in a public place except for the purpose of presenting an authorized public demonstration or exhibition or pursuant to instruction in conjunction with an organized school or class. When transporting throwing stars or nunchaku for a public demonstration or exhibition or for a school or class, they shall be transported in a closed, non-accessible container.
- F. It shall not be an offense if the defendant was:
 - 1. A person in his or her own dwelling or place of business or on property owned or under his or her control at the time of the act of carrying; or
 - 2. A person in a private automobile or other private means of conveyance who carries a weapon for lawful protection of such person's or another's person or property while traveling; or
 - 3. A person who, at the time of carrying a concealed weapon, held a valid written permit to carry a concealed weapon issued pursuant to the Colorado Revised Statutes section 18-12-105.1, as it existed prior to its repeal, or, if the weapon involved was a handgun, a valid permit to carry a concealed handgun or a temporary emergency permit issued pursuant to Part 2 of Article 12 of Title 18, C.R.S.; except that it shall be an offense under this Section if the person carrying a concealed handgun in violation of the provisions of Section 18-12-214, C.R.S.; or
 - 4. A peace officer, as described in the Colorado Revised Statutes section 16-2.5-101, when carrying a weapon in conformance with the policy of the employing agency as provided in the Colorado Revised Statutes section 16-2.5-101 (2) ; or
 - 5. A United States probation officer or a United States pretrial services officer while on duty and serving in the State of Colorado under the authority of rules and regulations promulgated by the judicial conference of the United States.
- G. Definitions as used in this section:
 - 1. "Knife" means any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length, or any other dangerous instrument capable of inflicting, cutting, stabbing, or tearing wounds, but does not include a hunting or fishing knife carried for sports use. The issue that a knife is a hunting or fishing knife must be raised as an affirmative defense.
 - 2. "Firearm" means any handgun, automatic, revolver, pistol, rifle, shotgun, taser, or other instrument or device capable or intended to be capable of discharging

bullets, cartridges, or other explosive charges.

3. “Deadly Weapon” means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury:
 - a. A firearm, whether loaded or unloaded;
 - b. A knife;
 - c. A bludgeon; or
 - d. Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

In addition to the penalties provided therefore, every person convicted of any violation of this Section shall forfeit to the City such weapon(s) described above.

9.05.002 SALE OF WEAPONS. It is unlawful for any person to sell, loan, or furnish any “Firearm” as described in Section 9.05.001 to any person under the influence of alcohol or any narcotic drug, stimulant, or depressant, or to any person in a condition of agitation and excitability or to any minor.

- A. Such unlawful sale, loan, or furnishing shall be grounds for revocation of any license issued by the city to such person.
- B. Any person who knowingly violates any of the provisions of this Section commits a Class A Municipal Offense.

9.05.003 DISCHARGING FIREARMS, BB GUNS. It shall be unlawful for any person to fire, shoot or discharge any “Firearm” described in Section 9,05.001 or of any description, or BB gun or pellet gun whatsoever, whether powered with gun powder, compressed air, gas cartridges or spring, within the city limits, however:

- A. The discharge of firearms or weapons by any member of any law enforcement organization, federal, state, county or city, in the course of his official duty shall not be deemed a violation of this section.
- B. The discharge of firearms or weapons by authorized classes of a law enforcement agency, Parks and Recreation Department program, schools or universities at all times under proper instruction and supervision of shooting ranges as may be authorized or permitted by law, shall not be deemed a violation of this section.
- C. Permission to discharge a firearm or weapon, subject to be revoked by the City Council at any time, may be granted in writing by the Chief of Police. Such permission shall limit the time and place of such firing and specifically set forth the purpose and limitations for which each permission to discharge a firearm or weapon has been granted. When the firing of a firearm or weapon is within the authorized limits, it shall not be deemed a violation of this section.
- D. Any person who knowingly violates any of the provisions of this Section commits a Class A Municipal Offense, and in addition to the penalties prescribed therefor, any weapon, firearm, BB gun or pellet gun discharged in violation of this Section shall be confiscated

and may be disposed of by order of the Municipal Court.

- E. This Section does not apply to the discharge of a firearm expressly permitted under Colorado law, i.e., for the purpose of exercising the rights contained in section 18-1-704 or section 18-1-704.5.

Section 6: That Chapter 9.08 of the Fruita Municipal Code, concerning Alcohol and Drugs is hereby repealed and re-enacted to read as follows:

9.08.001 DEFINITIONS. Definitions applicable to Chapter 9.08 as used in the sections below, unless the context otherwise requires:

- A. “Alcoholic beverage” shall mean any fermented malt beverage or malt, vinous, or spirituous liquors, including 3.2 percent beer, of any kind and in any quantity.
- B. “Fermented malt beverage” shall mean any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water containing not less than one-half of one percent alcohol by volume and not more than three and two-tenths percent alcohol by weight or four percent alcohol by volume; except that “fermented malt beverage” shall not include confectionery containing alcohol within the limits prescribed by section 25-5-410 (1)(i)(II), C.R.S.
- C. “Malt liquors” includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof, in water containing more than three and two-tenths percent of alcohol by weight or four percent alcohol by volume.
- D. “Marihuana” or ‘marijuana’ means all parts of the plant cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or its resin. It does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilize seed of the plant which is incapable of germination, if these items exist apart from any other item defined as “marihuana”. “Marihuana” does not include “Marihuana concentrate” which is defined as hashish, tetrahydrocannabinol, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol.
- E. “Spirituous liquor” means any alcohol beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin, and every liquid or solid, patented or not, containing at least one-half of one percent alcohol by volume and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor, except as provided in subsections (D) and (F) of this section, shall not be construed to be fermented malt or malt or vinous liquor but shall be construed to be spirituous liquor.
- F. “Vinous liquors” means wine and fortified wines that contain not less than one-half of one percent and not more than twenty-one percent alcohol by volume and shall be construed to mean an alcohol beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

9.08.010 DRINKING OF ALCOHOLIC BEVERAGES PROHIBITED IN CERTAIN PLACES. It shall constitute Class B Municipal offense for any person to drink an alcoholic beverage in the City in any public place, including any public street, road, highway, alley or public way which is either publicly or privately owned and used by the public with the following exceptions.

- A. A person twenty one (21) years of age or older may drink fermented malt beverages in a public park unless otherwise prohibited by appropriate notice.
- B. A person twenty one (21) years of age or older may consume malt, vinous, or spirituous liquors on the licensed premises of a special event permitted to sell alcoholic beverages pursuant to state statutes.

The fact that a person is in or upon a motor vehicle at the time of such drinking shall not be a defense in a prosecution under this Section.

9.08.020 DISTRIBUTION TO MINORS AND OTHERS PROHIBITED. It is a Class A municipal offense for any person to sell, serve, give away, dispose of, exchange or deliver, or to permit the sale, serving, giving or procuring of any “alcoholic beverage” to or for any person under 21 years of age, to a visibly intoxicated person, or to a known habitual drunkard. Said offense shall be one of strict liability.

9.08.030 PURCHASE, POSSESSION, CONSUMPTION, UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE BY PERSONS UNDER THE AGE OF 21 PROHIBITED.

It shall be unlawful for any person under the age of 21 to:

- A. Knowingly obtain, or attempt to obtain an alcoholic beverage by any method in any place where such alcoholic beverage is sold; or
- B. Knowingly use any false, fraudulent or altered identification card, or make other misrepresentations of age, in order to purchase or attempt to purchase, any alcoholic beverage.
- C. To possess, consume or be under the influence of an alcoholic beverage anywhere within the City. Prohibited possession, consumption or under the influence of an alcoholic beverage by an under age person is a strict liability offense.
- D. Definitions:
 - 1. "Possession of an alcoholic beverage" means that a person has or holds any amount of an alcoholic beverage anywhere on his person, or that a person owns or has custody of an alcoholic beverage, or has an alcoholic beverage within his or her immediate presence and control.
- E. Defenses, exceptions:
 - 1. It shall be an affirmative defense to any violation of this section that the person under the age of 21 had the existence of any alcoholic beverage in his or her body

was due solely to 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 the ingestion of a confectionery, which contained any alcohol within the limits prescribed by Section 25-5-410 (1)(i)(II),C.R.S.

2. It shall be an affirmative defense to any violation of this section that the person under the age of 21 was participating in a religious ceremony or practice, or was participating in a supervised and bona fide investigation conducted by a law enforcement agency, or that the conduct was permitted by Articles 46 and/or 47 of Title 12, Colorado Revised Statutes.
 3. Nothing in this section shall prohibit any person under the age of 21 from possessing or consuming any alcoholic beverage in their own home with the knowledge and permission of, and in the presence and under supervision of, their natural parent(s) or legal guardian, nor to prohibit any natural parent or legal guardian from providing any alcoholic beverage to their child (ren) in their own home.
- F. During any trial for a violation of this section, any information provided on a bottle, can, or any other container with labeling indicating the contents of the same shall be admissible into evidence, and the information on the same 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 an alcoholic beverage. A label which identifies the contents of any bottle, can, or other container as an alcoholic beverage, shall constitute prima facie evidence that the contents of the bottle, can, or other container was composed in whole or in part of an alcoholic beverage.
- G. A person who commits a violation of this section shall be punishable by a fine, a jail sentence, useful public service, suspension of driver's license, alcohol education classes, alcohol evaluation and treatment, or any combination of these in the discretion of the Court subject to the following:
1. Useful public service no less than 24 hours for any single offense shall be imposed.
 2. Drivers' license may be suspended for a period of three (3) months for a first time offense and up to one (1) year for subsequent offenses.
 3. Fines of up to \$250.00 for a first offense, up to \$500.00 for a second offense and up to \$1,000.00 for a third or subsequent offense, may be imposed. Fines may be suspended on the condition of timely completion of useful public service and alcohol classes or treatment. This subsection shall not limit the discretion of the court to suspend fines for other reasons it deems appropriate. It is the intention of the City Council in adopting this subsection to establish a preference for useful public service, alcohol education and/or treatment over fines for first time offenders.

- H. Each violation of subsections A – C of this ordinance, by a person who is 18 years of age or older may be punishable by up to 30 days in jail, in combination with or in lieu of any penalties set for in subsection G of this ordinance, Section 9.08.030, in the discretion of the Court.

9.08.050 POSSESSION OF OR USE OF MARIJUANA PROHIBITED.

- A. It shall be unlawful for any person to purchase or possess one (1) ounce or less of marihuana/marijuana, and/or consume, and/or be under the influence of any quantity of marihuana/marijuana; except as allowed for medicinal purposes.

B. Penalties:

1. Any person under the age of eighteen (18) who violates this section shall be punishable by useful public service, suspension of drivers' license, drug education classes, drug evaluation and treatment, fines or any combination of these in the discretion of the court, subject to the following:
 - a. Useful public service of no less than 24 hours for any single offense shall be imposed.
 - b. Drivers' license may be suspended for a period of three (3) months for a first offense and up to one (1) year for subsequent offenses.
 - c. Fines of up to \$250.00 for the first offense, up to \$500.00 for a second offense and up to \$1,000.00 for a third offense, may be imposed. Fines may be suspended on the condition of timely completion of useful public service, drug classes or treatment. This subsection (1) (c) shall not limit the discretion of the court to suspend fines for other reasons it deems appropriate. It is the intention of the City Council in adopting this section (1) (c) to establish a preference for useful public service, drug education and/or treatment over fines.
2. Each violation of this section by a person who is 18 years of age or older may be punishable by up to one day in jail, in combination with or in lieu of any penalty provided for in subsection (1) of this ordinance, Section 9.08.050, in the discretion of the Court.

C. Exceptions:

1. Except as otherwise provided in the above Sections, a patient or primary care-giver charged with a violation of the City of Fruita municipal ordinances related to a patient's medical use of marijuana will be deemed to have established an affirmative defense to such alleged offense where:
 - a. The patient was previously diagnosed by a physician as having a debilitating medical condition;

- b. The patient was advised by his or her physician, in the context of a bona fide physician-patient relationship, that the patient might benefit from the medical use of marijuana in connection with a debilitating medical condition; and
- c. The patient and his or her primary care-giver were collectively in possession of amounts of marijuana only as permitted under Article XVIII Section 14 (4) (a) (1) and (II), and (5) (h) of the State of Colorado Constitution.
- d. Notwithstanding the foregoing provisions, no person, including a patient or primary care-giver, shall be entitled to the protection of this Section for his or her acquisition, possession, manufacture, production, use, sale, distribution, dispensing, or transportation of marijuana for any use other than medical use.
- e. Any property interest that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to such use, shall not be harmed, neglected, injured, or destroyed while in the possession of state or local law enforcement officials where such property has been seized in connection with the claimed medical use of marijuana. Any such property interest shall not be forfeited under any provision of state or local law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense or entry of a plea of guilty to such offense. Marijuana and paraphernalia seized by the state or local law enforcement officials from a patient or primary care-giver in connection with the claimed medical use of marijuana shall be returned immediately upon the determination of an officer or his or her designee that the patient or primary caregiver is entitled to the protection contained in Article XVII Section 14 of the State of Colorado Constitution as may be evidenced, for example, by a decision not to prosecute, the dismissal of charges, or acquittal.

9.08.060 POSSESSION OF DRUG PARAPHERNALIA PROHIBITED. As used in this Section, unless the text otherwise requires:

- A. “Drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagation, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injection, ingestion, inhaling, or otherwise introducing into the human body a controlled substance in violation of the laws of this State. “Drug paraphernalia” includes, but is not limited to:
 - 1. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances under circumstances in violation of the laws of this State;

2. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
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 marihuana;
4. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
5. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
6. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances; or
7. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - b. Water pipes;
 - c. Carburetion tubes and devices;
 - d. Smoking and carburetion masks;
 - e. Roach clips, meaning objects used to hold burning material, such as a marihuana cigarette that has become too small or too short to be held in the hand;
 - f. Miniature cocaine spoons and cocaine vials;
 - g. Chamber pipes;
 - h. Carburetion pipes;
 - i. Electric pipes;
 - j. Air-driven pipes;
 - k. Chillums;
 - l. Bongs; or
 - m. Ice pipes or chillers.

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

1. Statements by an owner or by anyone in control of the object concerning its use;
2. The proximity of the object to controlled substances;
3. The existence of any residue of controlled substances on the object;
4. Direct or circumstantial evidence of the knowledge of an owner, or of anyone in control of the object, or evidence that such person reasonably should know, that it

will be delivered to persons who he knows or reasonably should know, could use the object to facilitate a violation of Section 9.08.060;

5. Instructions, oral or written, provided with the object concerning its use;
 6. Descriptive materials accompanying the object which explain or depict its use;
 7. National or local advertising concerning its use;
 8. The manner in which the object is displayed for sale;
 9. Whether the owner, or anyone in control of the object, is a supplier of like or related items to the community for legal purposes, such as an authorized distributor or dealer of tobacco products;
 10. The existence and scope of legal uses for the object in the community;
 11. Expert testimony concerning its use.
- C. In the event a case brought pursuant to Section 9.08.060, the court shall hold an evidentiary hearing on issues raised pursuant to this Section. Such hearing shall be conducted in camera.
- D. Exceptions:
1. Except as otherwise provided in the above Sections, a patient or primary care-giver charged with a violation of the City of Fruita municipal ordinances related to a patient's medical use of marijuana will be deemed to have established an affirmative defense to such alleged offense where:
 - a. The patient was previously diagnosed by a physician as having a debilitating medical condition;
 - b. The patient was advised by his or her physician, in the context of a bona fide physician-patient relationship, that the patient might benefit from the medical use of marijuana in connection with a debilitating medical condition; and
 - c. The patient and his or her primary care-giver were collectively in possession of drug paraphernalia and/or amounts of marijuana only as permitted under Article XVIII Section 14 (4) (a) (1) and (II), and (5) (h) of the State of Colorado Constitution.
 - d. Notwithstanding the foregoing provisions, no person, including a patient or primary care-giver, shall be entitled to the protection of this Section for his or her acquisition, possession, manufacture, production, use, sale, distribution, and dispensing of drug paraphernalia for any use other than

for medical use.

- e. Any property interest that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to such use, shall not be harmed, neglected, injured, or destroyed while in the possession of state or local law enforcement officials where such property has been seized in connection with the claimed medical use of marijuana. Any such property interest shall not be forfeited under any provision of state or local law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense or entry of a plea of guilty to such offense. Paraphernalia seized by the state or local law enforcement officials from a patient or primary care-giver in connection with the claimed medical use of marijuana shall be returned immediately upon the determination of an officer or his or her designee that the patient or primary caregiver is entitled to the protection contained in Article XVII Section 14 of the State of Colorado Constitution as may be evidenced, for example, by a decision not to prosecute, the dismissal of charges, or acquittal. E. A person commits a Non-criminal Municipal Offense of possession of drug paraphernalia if he or she possesses drug paraphernalia and knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of this City or State.

Section 7: That Chapter 9.10 of the Fruita Municipal Code, concerning Sale and Possession of Tobacco Products is hereby repealed and re-enacted to read as follows:

9.10.010 DEFINITIONS As used in this chapter, the following words or phrases are defined as follows:

- A. “Minor” means any person under the age of eighteen (18).
- B. “Person” means any natural person, association, partnership, limited liability company, or corporation.
- C. “Smoking” means the carrying or possession of a lighted pipe, cigar, or cigarette of any kind and includes the lighting of the same.
- D. “Tobacco Products” means any substance as defined by section 39-28.5-101(5). C.R.S., including but not limited to any substance containing tobacco leaf, which may include but is not limited to: cigarettes, cigars, pipe tobacco snuff, and chewing or dipping tobacco. This definition does not include any nicotine containing product which is used for the purpose of helping a person stop smoking such as nicotine gum or patches.

9.10.020 UNLAWFUL POSSESSION OR USE OF TOBACCO PRODUCTS BY MINORS

- A. It shall be unlawful for any minor to knowingly possess, consume, or use, either by smoking, ingesting, absorbing, or chewing, any tobacco product.
- B. It shall be unlawful for any minor to knowingly obtain or attempt to obtain any tobacco product by misrepresentation of age, or use any false or altered identification for the purpose of purchasing any tobacco product.
- C. It shall be rebuttably presumed that the substance within a package or container is a tobacco product if the package or container has affixed to it a label which identifies the package or container as containing a tobacco product.
- D. Any minor who violates subsections A or B commits a Non-criminal Offense and upon conviction shall be subject to:
 - 1. A minor shall not be subject to any jail time but may be required to pay a fine as provided and may be required to perform no more than 48 hours useful public service (which may include education efforts or programs) or any combination of fine, public service and education.

9.10.030 UNLAWFUL FURNISHING OF OR SALE OF, TOBACCO PRODUCTS TO MINORS

- A. It shall be unlawful for any person to knowingly furnish to any minor, by gift, sale, or by any other means, any tobacco product.
- B. It shall be an affirmative defense to a prosecution under this section that the person furnishing the tobacco product was presented with and reasonably relied upon a document which identified the minor receiving the tobacco product as being eighteen (18) years of age or older.
- C. Any person who violates subsection A of this Section, commits a Class A Municipal Offense.

9.10.040 RETAIL SALE OF TOBACCO PRODUCTS

- A. It shall be unlawful for any business proprietor, manager, or other person in charge or control of a retail business of any kind to engage, employ or permit any minor to sell tobacco products from such retail business.
- B. It shall be unlawful for any business proprietor, manager, or other person in charge or control of a retail business of any kind to stock, sell or offer for sale tobacco products in any form or condition other than in the packaging provided by their manufacturer, or to permit or allow their agent, servant, or employee to sell tobacco products in any form or condition other than in the packaging provided by their manufacturer or, with respect to the sale of cigarettes, in packages containing less than twenty (20) cigarettes.

- C. It shall be unlawful for any person to sell a tobacco product by use of a vending machine or other coin-operated machine; except that cigarettes may be sold at retail through vending machines only in:
1. Factories, businesses, offices, or other places not open to the public; or
 2. Places to which minors are not permitted access.
- D. Any person who sells or offers to sell any cigarettes or tobacco products at retail shall display a warning sign, a specified in this subsection.
- E. Said warning sign shall be displayed in a prominent place in the building and on such machine at all times and shall have a minimum height of three inches (3”) and a width of six inches (6”) and shall read as follows:

WARNING:
IT IS ILLEGAL FOR ANY PERSON UNDER
EIGHTEEN YEARS OF AGE TO PURCHASE OR POSSESS
CIGARETTES AND TOBACCO PRODUCTS.
UPON CONVICTION A FINE OF UP TO \$1,000.00 PLUS NOT MORE THAN
48 HOURS OF USEFUL PUBLIC SERVICE MAY BE IMPOSED.

Any person who violates any subsection of this Section commits a Class A Municipal Offense.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
THIS ____ DAY OF _____, 2010.**

ATTEST:

CITY OF FRUITA, COLORADO

Margaret Steelman, City Clerk

H. Kenneth Henry, Mayor