

**TOWN OF JOHNSTOWN, COLORADO**

**ORDINANCE NO. 2023-249**

**AN ORDINANCE AMENDING REGULATIONS CONTAINED IN CHAPTER 10 OF THE JOHNSTOWN MUNICIPAL CODE, INCLUDING SUBSECTION 10-44(a)(4) OF ARTICLE III CONCERNING HARASSMENT, SECTION 10-62 OF ARTICLE IV CONCERNING CRIMINAL TRESPASS, ARTICLE IX CONCERNING FIREWORKS AND ARTICLE XII CONCERNING TOBACCO**

**WHEREAS**, the Town of Johnstown, Colorado (“Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

**WHEREAS**, the Town Council is vested with authority to administer the affairs of the Town.

**HARASSMENT**

**WHEREAS**, Article III of Chapter 10 of the Code regulates offenses against the person and Section 10-44 therein prohibits harassment; and

**WHEREAS**, in *People v. Moreno*, 506 P.3d 849 (2022), the Colorado Supreme Court held that, with respect to the state harassment statute, Section 18-9-111(1)(e), C.R.S., the phrase “intended to harass” when communicating by telephone, telephone network, data network, text message, instant message, computer, computer network, computer system, or other interactive electronic medium is facially overbroad and restricts protected free speech and is thus unconstitutional; and

**WHEREAS**, Section 10-44(a)(4) of the Johnstown Municipal Code (“Code”) contains a similar provision; and

**WHEREAS**, to comply with the Supreme Court’s ruling, Town staff recommends amending Section 10-44(a)(4) of the Code to omit the unconstitutional phrase.

**CRIMINAL TRESPASS**

**WHEREAS**, Article IV of Chapter 10 of the Code regulates offenses against property and Section 10-62 therein prohibits criminal trespass; and

**WHEREAS**, Town staff recommends that the Town Council expand the definition of criminal trespass.

## FIREWORKS

**WHEREAS**, Articles II and III of Chapter 6 and Article IX of Chapter 10 of the Code regulate fireworks in the Town; and

**WHEREAS**, Town staff recommends that the Town Council consolidate and revise the fireworks regulations to, among other changes, clarify that the possession, display, sale, use, ignition and discharge of fireworks in the Town except by authorized personnel is prohibited.

## TOBACCO

**WHEREAS**, Article XII of Chapter 10 of the Code regulates the possession, use and sale of tobacco products and provides, in part, that persons may not sell or distribute tobacco products to persons under eighteen (18) years of age; and

**WHEREAS**, the Colorado General Assembly, by C.R.S. § 18-13-121, raised the minimum age for the sale or distribution of tobacco products from eighteen (18) years of age to twenty-one (21) years of age; and

**WHEREAS**, Town staff recommends that the Town Council make a related change to Article XII of Chapter 10 of the Code and make other miscellaneous revisions to conform to state law.

## SUMMARY

**WHEREAS**, to effectuate the foregoing, the Town Council desires to amend Section 10-44(a)(4) of Article III of the Code concerning harassment, Section 10-62 of Article IV of the Code concerning criminal trespass, Article IX of Chapter 10 of the Code concerning fireworks and Article XII of Chapter 10 of the Code concerning tobacco; and

**WHEREAS**, the Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of the public health, welfare, peace, safety and property and that this Ordinance is in the best interests of the citizens of the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:**

**Section 1.** Subsection 10-44(a)(4) of Article III of the Johnstown Municipal Code shall be amended in full to read as follows:

### **Sec. 10-44. Harassment.**

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

...

- (4) 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 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;

.....

**Section 2.** Subsection 10-62 of Article IV of the Johnstown Municipal Code shall be amended in full to read as follows:

**Sec. 10-62. Criminal Trespass.**

It shall be unlawful for any person to commit the crime of criminal trespass. A person commits the crime of criminal trespass if he or she:

- (a) Enters or remains in or upon the property of another, including public property, in violation of a notice lawfully posted or exhibited on the property, absent authorization to do so;
- (b) Enters or remains in or upon the property of another, including public property, in violation of any notice, warning or protest given by the owner, the Johnstown Police Department or any other authorized person;
- (c) Enters or remains in or upon property of another, including public property, which is enclosed in a manner designed to exclude intruders or is fenced; or
- (d) Enters or remains in or upon the property of another, including public property, to which access is commonly and customarily restricted and the person entering or remaining knows or should know that he or she was not licensed, invited or privileged to do so.

**Section 3.** Article IX of Chapter 10 of the Johnstown Municipal Code is hereby repealed in its entirety and readopted to read as follows in its entirety:

**Article IX – Fireworks**

**Sec. 10-81 – Definitions**

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

*Fireworks*

- (i) includes any article, device or substance prepared for the primary purpose of producing a visual or auditory sensation by combustion, explosion, deflagration or detonation, including, without limitation, the following articles and devices commonly known and used as fireworks: blank cartridges, toy pistols, toy cannons, toy canes, toy guns, in which explosives are used; fire balloons (balloons of the type which have a burning material of any kind attached thereto or which require fire underneath to propel them); firecrackers, torpedoes, skyrockets, rockets, roman candles, day-glow bombs, torches or other fireworks of like construction and any fireworks containing any explosive or flammable compound, any tablets or other device containing any explosive substance; and
- (ii) does not include toy pistols, toy cannons or toy guns in which paper caps containing not more than twenty-five one-hundredths (.25) of a grain of explosive compound per cap are used whether such caps are of single roll or tape type, sparklers, trick matches, cigarette loads,

trick noise makers, toy smoke devices, novelty auto alarms, highway flares, railway fuses, smoke candles or other emergency signal devices.

*Authorized personnel* includes any person who holds a permit, license or other lawful authorization issued by the Town, the Front Range Fire Rescue Fire Protection District or the Loveland Fire Rescue Authority or any other authorized governmental entity to possess, display, sell, use, ignite or discharge fireworks in the Town.

**Sec. 10-82 – Prohibited use.**

- (a) No person, other than authorized personnel, shall possess, display, sell, use, ignite or discharge any fireworks in the Town.
- (b) No person, other than authorized personnel, shall permit the possession, display, sale, use, ignition or discharge of any fireworks on such person's property. A person's property includes property that is owned, leased or rented by such person or property that such person has a lawful right to occupy.

**Sec. 10-83 - Evidence.**

- (a) The court shall not preclude evidence regarding violations of this Article based solely on the fact that the firework was destroyed by its use, ignition or discharge.
- (b) To the extent this Article conflicts with the provisions of the International Fire Code, as adopted by the Town, this Article shall control.

**Section 4.** Article XII of Chapter 10 of the Johnstown Municipal Code is hereby repealed in its entirety and readopted to read as follows in its entirety:

**ARTICLE XII Possession, Use and Sale of Tobacco Products**

**Sec. 10-231. Intent.**

It is the intent of this Article to protect the public health, safety and welfare by prohibiting the possession and use of tobacco products by persons under eighteen (18) years of age and prohibiting the dissemination and furnishing of tobacco products to persons under twenty-one (21) years of age.

**Sec. 10-232. Definitions; presumption.**

- (a) As used in this Article, the following words or phrases are defined as follows:

*Retailer* means any person who sells tobacco products to individuals for personal consumption.

*Tobacco product* means: (1) a product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or (2) any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including but not limited to a nicotine vaporizer, an electronic cigarette, cigar, cigarillo or pipe.

- (b) 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.

**Sec. 10-233. Unlawful possession or use of tobacco products by minors.**

- (a) It shall be unlawful for any person under eighteen (18) years of age to possess, consume or use, either by smoking, ingesting, absorbing or chewing, any tobacco product.
- (b) It shall be unlawful for any person under eighteen (18) years of age to obtain or attempt to obtain any tobacco product by misrepresentation of age or by any other method.

**Sec. 10-234. Unlawful furnishing of tobacco products; retail sales.**

- (a) It shall be unlawful for any person to sell, distribute or otherwise furnish a tobacco product to a person under twenty-one (21) years of age.
- (b) Each retailer shall verify by means of photographic identification containing the bearer's date of birth that a person purchasing a tobacco product is twenty-one (21) years of age or older. 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 photographic identification containing the bearer's date of birth which identified the person receiving the tobacco product as being twenty-one (21) years of age or older.
- (c) 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 person under eighteen (18) years of age to sell tobacco products from such retail business.
- (d) It shall be unlawful for a retailer to sell or offer to sell tobacco products by use of a vending machine or other coin operated machine.

**Section 5. Severability.** If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

**Section 6. Code revisions.** Minor changes such as the format and other changes to unify the revised Code may be necessary. The Town Clerk is hereby authorized to make such changes, provided that neither the intent nor substantive content will be altered by such changes.

**Section 7. Publication; Effective Date.** This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Home Rule Charter of the Town of Johnstown, Colorado ("Charter") and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk. This Ordinance shall become effective upon final passage as provided by the Charter. Copies of the entire Ordinance are available at the office of the Town Clerk.

**INTRODUCED, AND APPROVED** on first reading by the Town Council of the Town of Johnstown, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2023.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

By: \_\_\_\_\_ By: \_\_\_\_\_  
Hannah Hill, Town Clerk Gary Lebsack, Mayor

**PASSED UPON FINAL APPROVAL AND ADOPTED** on second reading by the Town Council of the Town of Johnstown, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2023.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

By: \_\_\_\_\_ By: \_\_\_\_\_  
Hannah Hill, Town Clerk Gary Lebsack, Mayor