



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE:	May 1, 2023
SUBJECT:	Public Hearing – First Reading Ordinance 2023-249 amending Article XII of Chapter 10 of the Johnstown Municipal Code, including Sec. 10-44(a)(4) - Harassment, Sec.10-62- Criminal Trespass, Article IX -Fireworks, and Article XII- Tobacco.
ACTION PROPOSED:	Approve Ordinance 2023-249.
ATTACHMENTS:	1. Ordinance 2023-249
PRESENTED BY:	Brian Phillips, Chief of Police

AGENDA ITEM DESCRIPTION:

Article III of Chapter 10 of the Code regulates offenses against the person and Section 10-44 therein prohibits harassment. Due to a recent Colorado Supreme Court ruling, specifically, *People v. Moreno*, 506 P.3d 849 (2022), the 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. Currently, Section 10-44(a)(4) of the Johnstown Municipal Code (“Code”) contains a similar provision so 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.

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

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. 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 Town staff recommends that the Town Council make a related

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change to Article XII of Chapter 10 of the Code and make other miscellaneous revisions to conform to state law.

Article IV of Chapter 10 of the Code regulates offenses against property and Section 10-62 therein prohibits criminal trespass; and Town staff recommends that the Town Council expand the definition of criminal trespass.

The Town’s criminal trespass ordinance reads as follows: “It shall be unlawful for any person to commit the offense of criminal trespass, as provided in this Section. For purposes of this Section, a person commits the crime of criminal trespass if he or she unlawfully enters or remains in or upon premises, whether enclosed in a manner designed to exclude intruders or fenced or not.” Section 10-62. In the context of a privately owned business, it is arguably “unlawful” to remain upon private property when you have been issued a written trespass notice.

LEGAL ADVICE:

Drafted and reviewed by the Town Attorney.

FINANCIAL ADVICE:

NA

RECOMMENDED ACTION: Approve Ordinance 2023-249 upon first reading.

SUGGESTED MOTIONS:

For Approval: I move to approve Ordinance No. 2023-249, an Ordinance Amending Article XII of Chapter 10 of the Johnstown Municipal Code, including Sec. 10-44(a)(4) - Harassment, Sec.10-62- Criminal Trespass, Article IX -Fireworks, and Article XII- Tobacco upon first reading.

For Denial: I move to deny Ordinance No. 2023-249, an Ordinance Amending Article XII of Chapter 10 of the Johnstown Municipal Code, including Sec. 10-44(a)(4) - Harassment, Sec.10-62- Criminal Trespass, Article IX -Fireworks, and Article XII- Tobacco upon first reading.

Reviewed and Approved for Presentation,



Town Manager

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