

## Chapter 12 OFFENSES

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## Chapter 12 OFFENSES

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### ARTICLE I. IN GENERAL

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#### **Sec. 12-1. Penalty.**

Violations of this chapter are punishable as provided in Section 1-8.  
(Code 2007, 12-1)

#### **Sec. 12-2. Aiding an Illegal Activity.**

1. Aiding an illegal activity consists of either:

- (1) Being found in any place where gambling or prostitution is being conducted, with knowledge of such activity; or
- (2) Giving or attempting to give any signal intended to or calculated to warn or give warning of the approach of any peace officer to any person in or about any building, trailer, motor vehicle, premises or establishment used for any illegal activity or where any illegal activity is being conducted.

2. Aiding an illegal activity is a misdemeanor.  
(Code 2007, 12-2)

#### **Sec. 12-3. Concealing Identity.**

It is unlawful for anyone to conceal one's true name or identity or disguise oneself with the intent to obstruct due execution of the law or with the intent to intimidate, hinder or interrupt any public officer, police officer or any other person in the legal performance of his duties.  
(Code 2007, 12-3)

#### **Secs. 12-4 to 12-20. Reserved.**

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### ARTICLE II. OFFENSES AGAINST THE PERSON

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#### **Sec. 12-21. Assault.**

1. Assault consists of either:

- (1) An attempt to commit a battery upon the person of another;
- (2) Any unlawful act, threat or menacing conduct which causes another person to reasonably believe that he is in danger of receiving an immediate battery;

(3) The use of fighting words which, by their very utterance, are likely to cause an average addressee to fight; or

(4) The use of insulting language toward another impugning his honor, delicacy or reputation.

2. Assault is a misdemeanor.  
(Code 2007, 12-21)

**Sec. 12-22. Battery.**

1. Battery is the unlawful, intentional touching or application of force to the person of another when done in a rude, insolent or angry manner.
2. Battery is a misdemeanor.  
(Code 2007, 12-22)

**Sec. 12-23. Libel.**

1. Libel consists of making, writing, publishing, selling or circulating without good motives and justifiable ends, any false and malicious statement affecting the reputation, business or occupation of another, or which exposes another to hatred, contempt, ridicule, degradation or disgrace.
2. Libel is a misdemeanor.
3. The word "malicious," as used in this section, signifies an act done with evil or mischievous design and it is not necessary to prove any special facts showing ill-feeling on the part of the person who is concerned in making, printing, publishing or circulating a libelous statement against the person injured thereby.
- (1) A person is the maker of a libel who originally contrived and either executed it himself by writing, printing, engraving or painting, or dictated, caused or procured it to be done by others.
- (2) A person is the publisher of a libel who either of his own will or by the persuasion or dictation, or at the solicitation or employment for hire of another, executes the same in any of the modes pointed out as constituting a libel; however, if anyone by force or threats is compelled to execute such libel he is guilty of no crime.
- (3) A person is guilty of circulating a libel who, knowing its contents, either sells, distributes or gives, or who, with malicious design, reads or exhibits it to others.
- (4) The written, printed or published statement to come within the definition of libel must falsely convey the idea either:
- (a) That the person to whom it refers has been guilty of some penal offenses;
- (b) That he has been guilty of some act or omission which, though not a penal offense, is disgraceful to him as a member of society, and the natural consequence of which

- is to bring him into contempt among honorable persons;
- (c) That he has some moral vice or physical defect or disease which renders him unfit for intercourse with respectable society, and as such should cause him to be generally avoided;
  - (d) That he is notoriously of bad or infamous character; or
  - (e) That any person in office or a candidate therefore is dishonest and therefore unworthy of such office, or that while in office he has been guilty of some malfeasance rendering him unworthy of the place.
- (5) It shall be sufficient to constitute the crime of libel if the natural consequences of the publication of the same is to injure the person defamed although no actual injury to his reputation need be proven.
- (6) No statement made in the course of a legislative or judicial proceeding, whether true or false, although made with intent to injure and for malicious purposes, comes within the definition of libel.  
(Code 2007, 12-23)

**Secs. 12-24 to 12-40. Reserved.**

## ARTICLE III. OFFENSES INVOLVING PROPERTY RIGHTS

### DIVISION 1. GENERALLY

**Sec. 12-41. Criminal Damage to Property.**

1. Criminal damage to property consists of intentionally damaging any real or personal property of another without the consent of the person lawfully in possession of the property.
2. Criminal damage to property is a misdemeanor.  
(Code 2007, 12-41)

**Sec. 12-42. Destruction, defacing and injury of property.**

It shall be unlawful to willfully injure, destroy or secrete any goods, chattels or valuable papers of another; to prepare any deadfall or dig any pit or arrange any trap to injure another's person or property; to take down, injure or remove any monument or street sign; to injure or destroy any fence or any shade or fruit tree or any kind of public or private property; or to deface any sidewalk.

(Code 2007, 12-42)

**Sec. 12-43. Tampering with or damaging public utility prohibited.**

1. It shall be unlawful for any person to connect or attach any kind of pipe, wire, or other contrivance to any pipe, fire hydrant, line, wire or other conductor or appurtenance thereto,

carrying gas, water, electricity, television signals telephone signals, or other conveyances provided by and belonging to a public utility whether publicly or privately owned) in such a manner so as to enable such persons to consume or use gas, water, electricity, television signals, telephone signals, or other utility service, without the same passing through a meter, without obtaining the proper permit or paying the required fee, or in any other way so as to evade payment for such public utility service.

2. Any person who opens or draws water from any valve, stop cock or faucet by which the flow of water in or from the water system is controlled, after having been notified that the same has been closed or shut for specific cause by order of competent authority, shall be guilty of a misdemeanor.
3. It shall also be unlawful for any person to damage, molest, tamper with or destroy any pipe, line, wire, meter or any other part of any public utility, including cable television, water, gas, electricity and telephone and telegraph systems.
4. If any meter, pipe, line, wire, fixture or other installation or appurtenance thereto provided by a public utility primarily for the purpose of serving a particular account is found to have been tampered with or damaged in violation of subsection above, the person, corporation, association or other customer whose name appears on the records of the public utility affected as the person who has applied for service, or is otherwise responsible for such account shall be held prima facie responsible for such violation.
5. The term "tamper with" as used in this section shall include but not be limited to the performing of any act which if uncorrected would result in any utility customer being billed or charged by such utility for a greater or lesser amount of utility service than actually furnished.

(Code 2007, 12-43)

**Secs. 12-44 to 12-60. Reserved.**

## **DIVISION 2. LARCENY AND RELATED OFFENSES.**

### **Sec. 12-61. Petty Larceny.**

1. Petty larceny consists of the stealing of anything of value which belongs to another.
2. Petty larceny is a misdemeanor.  
(Code 2007, 12-61)

### **Sec. 12-62. Shoplifting.**

1. Shoplifting consists of anyone (1) or combination of the following acts:
  - (1) Willfully taking possession of any merchandise with the intention of converting it without paying for it.
  - (2) Willfully concealing any merchandise with the intention of converting it without paying for it.

- (3) Willfully altering any label, price tag or marking upon any merchandise with the intention of depriving the merchant of all or some part of the value of it.
  - (4) Willfully transferring any merchandise from the container in or on which it is displayed to any other container with the intention of depriving the merchant of all or some part of the value of it.
2. Shoplifting is a misdemeanor.
3. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
  - (1) *Store*. A place where merchandise is sold or offered to the public for sale at retail.
  - (2) *Merchandise*. Chattels of any type or description offered for sale in or about a store.
  - (3) *Merchant*. Any owner or proprietor of any store or any agent, servant or employee of the owner or proprietor.
4. Any person who willfully conceals merchandise on his person or on the person of another or among his belongings or the belongings of another or on or outside the premises of the store shall be prima facie presumed to have concealed the merchandise with the intention of converting it without paying for it. If any merchandise is found concealed upon any person or among his belongings, it shall be prima facie evidence of willful concealment.
5. If any public safety officer, special officer or merchant has probable cause for believing that a person has willfully taken possession of any merchandise with the intention of converting it without paying for it, or has willfully concealed merchandise and that he can recover the merchandise by detaining the person or taking him into custody, public safety officers, special officers or merchant may, for the purpose of attempting to effect a recovery of the merchandise, take a person into custody and detain him in a reasonable manner for a reasonable time.
6. Any public safety officer may arrest, without warrant, any person he has probable cause for believing has committed the crime of shoplifting.  
(Code 2007, 12-62)

**Sec. 12-63. Falsely Obtaining Services or Accommodations.**

1. Falsely obtaining services or accommodations consists of any person obtaining service, food, entertainment or accommodations without paying with the intent to cheat or defraud the owner or person supplying such service, food, entertainment or accommodations.
2. Any law enforcement officer may arrest without warrant any person he has probable cause for believing has committed the crime of falsely obtaining services or accommodations as defined in this section.
3. Falsely obtaining services or accommodations is a misdemeanor.  
(Code 2007, 12-63)

**Sec. 12-64. Fraud.**

1. Fraud consists of the intentional misappropriation or taking of anything of value which belongs to another by means of fraudulent conduct, practices or representations.
2. Fraud is a misdemeanor.  
(Code 2007, 12-64)

**Sec. 12-65. Receiving Stolen Property.**

1. Receiving stolen property means intentionally to receive, retain or dispose of stolen property knowing that it has been stolen or believing it has been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner.
2. The requisite knowledge or belief that property has been stolen is presumed in the case of a dealer who:
  - (1) Is found in possession or control of property stolen from two (2) or more persons on separate occasions;
  - (2) Acquires stolen property for a consideration which the dealer knows is far below the property's reasonable value. A dealer shall be presumed to know the fair market value of the property in which he deals; or
  - (3) Is found in possession or control of five (5) or more items of property stolen within one (1) year prior to the time of the incident charged pursuant to this section.
3. For the purposes of this section:
  - (1) Dealer. A person in the business of buying or selling goods or commercial merchandise; and
  - (2) Stolen property. Any property acquired by theft, larceny, fraud, embezzlement, robbery or armed robbery.
4. Receiving stolen property is a misdemeanor.  
(Code 2007, 12-65)

**Secs. 12-66 to 12-80. Reserved.****DIVISION 3. WORTHLESS CHECKS****Sec. 12-81. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:  
(Code 2007, 12-81)

**Check**

Any check, draft or written order for money.

**Credit**

An arrangement or understanding with the drawer for the payment of the check.

**Draw**

The making, drawing, uttering or delivering of a check.

**Notice**

Consists of either notice given to the person entitled thereto in person or notice given to such person in writing. The notice in writing is presumed to have been given when deposited as certified matter in the United State mail, addressed to the person at his address as it appears on the check.

**Thing of value**

Includes money, property, services, goods, wares and lodging.

**Sec. 12-82. Purpose.**

It is the purpose of this division to remedy the evil of giving checks on a bank without first providing funds in or credit with the depository on which they are made or drawn to payor satisfy the same, which tends to create the circulation of worthless checks on banks, bad banking, check kiting and mischief to trade and commerce.

(Code 2007, 12-82)

**Sec. 12-83. Exceptions.**

This article does not apply to:

1. Any check where the payee or holder knows or has been expressly notified prior to the drawing of the check or has reason to believe that the drawer did not have on deposit or to his credit with the drawee sufficient funds to insure payment on its presentation; or
2. Any post-dated check.  
(Code 2007, 12-83)

**Sec. 12-84. Unlawful to Issue.**

It is unlawful for a person to issue in exchange for anything of value, with intent to defraud, any check, draft or order for payment of money upon any bank or other depository, knowing at the time of the issuing that the offender has insufficient funds in or credit with the bank or depository for the payment of such check, draft or order in full upon its presentation.

(Code 2007, 12-84)

**Sec. 12-85. Intent to Defraud; How Established.**

In the prosecution of offenses under this division, the following rules of evidence shall govern:

1. If the maker or drawer of a check, payment of which is refused by the bank or depository upon which it is drawn because of no account in the name of the maker or drawer in such

bank, proof of the fact that the maker or drawer had no account in the bank or depository upon which the check is drawn shall be prima facie evidence of an intent to defraud and of knowledge of insufficient funds in or credit with the bank or depository with which to pay such draft;

2. If the maker or drawer of a check, payment of which is refused by the bank or depository upon which it is drawn because of insufficient funds or credit in the account of the maker or drawer in the bank or depository, fails, within three (3) business days after notice to him that the check was not honored by the bank or depository, to pay the check in full, together with any protest fees or costs thereon, such failure shall constitute prima facie evidence of a knowledge of the insufficiency of funds in the bank of depository at the time of the making or drawing of such check and of an intent to defraud.

(Code 2007, 12-85)

**Secs. 12-86 to 12-100. Reserved.**

#### **DIVISION 4. TRESPASS AND RELATED OFFENSES**

**Sec. 12-101. Criminal Trespass.**

1. Criminal trespass consists of unlawfully entering or remaining upon the lands of another knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant thereof.
2. Criminal trespass also consists of unlawfully entering or remaining upon lands owned, operated or controlled by the state or any of its political subdivisions knowing that consent to enter or remain is denied or withdrawn by the custodian thereof.
3. Any person who enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, is guilty of a misdemeanor.
4. Any person who enters and remains on the lands of another after having been requested to leave is guilty of a misdemeanor.
5. Any person who enters upon the lands of another when such lands are posted against trespass at every roadway or apparent way of access is guilty of a misdemeanor.
6. Any person who drives a vehicle upon the lands of another except through a roadway or other apparent way of access, when such lands are fenced in any manner, is guilty of a misdemeanor.
7. Criminal trespass is a misdemeanor.  
(Code 2007, 12-101)

**Sec. 12-102. Wrongful Entry of Public Facility.**

1. Wrongful entry of a public facility consists of knowingly entering any public facility without permission of the lawful custodian when the facility is not open to the public. As used in this section, "public facility" means any building, structure or enclosure used for a public purpose or as a place of public gathering owned or under the control of the state or one (1) of its political subdivisions or a religious, charitable, educational, or recreational association.
2. Wrongful entry of a public facility is a misdemeanor.  
(Code 2007, 12-102)

**Sec. 12-103. Wrongful Use of Public Property.**

1. Wrongful use of public property consists of:
  - (1) Knowingly entering any public property without permission of the lawful custodian or his representatives when the public property is not open to the public;
  - (2) Remaining in or occupying any public property after having been requested to leave by the lawful custodian, or his representative, who has determined that the public property is being used or occupied contrary to its intended or customary use or that the public property may be damaged or destroyed by the use; or
  - (3) Depriving the general public of the intended or customary use of public property without a permit.
2. Permits to occupy or use public property may be obtained from the lawful custodian or his representative upon written application which:
  - (1) Describes the public property to be occupied or used; and
  - (2) States the period of time during which the public property will be occupied or used. The applicant shall pay in advance a reasonable fee or charge for the use of the public property. The fee or charge shall be prescribed by the lawful custodian or his representative.
3. The lawful custodian or his representative may issue the permit if he believes that the use or occupation of the public property will not unreasonably interfere with the intended or customary use of the public property by the general public and that the use will not damage or destroy the public property.
4. Any person occupying or using public property under the authority of a permit shall submit to a search for firearms or other weapons and surrender any firearms or other weapons to any peace officer, who has jurisdiction, upon request.
5. As used in this section, "public property" means any public building, facility, structure or enclosure used for a public purpose or as a place of public gathering, owned or under the control of the state or one (1) of its political subdivisions or a religious, charitable, educational or recreational association.

6. Any person who commits wrongful use of public property after having been requested to leave by the lawful custodian or his representative or any peace officer, who has jurisdiction, or any person who commits wrongful use of public property is guilty of a misdemeanor.  
(Code 2007, 12-103)

#### **Sec. 12-104. Simple Trespass.**

The following acts are hereby declared unlawful:

1. Being concealed upon any property of another without lawful business with the person in lawful possession of the premises.
2. Entering upon any private property and looking into any occupied dwelling without the consent of the occupant or owner of the dwelling.
3. Entering or remaining in or upon the buildings or grounds of any public, private, parochial school or preschool with the intention, as evidenced by some overt act, of interfering with the activities on the premises of teachers, pupils or children.  
(Code 2007, 12-104)

#### **Sec. 12-105. Loitering.**

1. No person shall loiter, idle or prowl in a place, at a time and in a manner that warrants alarm for the safety of persons or property in the vicinity.
2. Among the circumstances which may be considered in determining whether such alarm is warranted, is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object.
3. Unless flight by the actor or other circumstance makes it impracticable, a peace officer shall, prior to any risk for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct.
4. No person shall be convicted of an offense under this section, if the peace officer did not comply with subsection (c) above, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.
5. A person who commits idling, loitering or prowling is guilty of a misdemeanor.  
(Code 2007, 12-105)

#### **Secs. 12-106 to 12-120. Reserved.**

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**ARTICLE IV. OFFENSES AGAINST PUBLIC PEACE AND ORDER**

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**Sec. 12-121. Disorderly Conduct.**

1. Disorderly conduct consists of either:
  - (1) Engaging in any public place in a violent, abusive, indecent or otherwise disorderly conduct which creates a clear and present danger of violence;
  - (2) Maliciously making a telephone call with intent to annoy or threaten another, whether or not conversation ensues;
  - (3) Maliciously disturbing, threatening, or, in an insolent manner, intentionally touching any house or vehicle occupied by a person;
  - (4) Inciting, causing, aiding, abetting or assisting in creating any riot, affray or disturbance at or within any dwelling or building, whether public or private, or at any other public place in the city; or
  - (5) Using in any public place fighting words which by their very utterance are likely to provoke a violent reaction in an average person to whom such words are addressed.
2. Disorderly conduct is a misdemeanor.  
(Code 2007, 12-121)

**Sec. 12-122. Unlawful Assembly.**

1. Unlawful assembly consists of three (3) or more persons assembling together with intent to do any unlawful act with force or violence against the person or property of another, and who shall make any overt act to carry out such unlawful purpose.
2. Unlawful assembly is a misdemeanor.  
(Code 2007, 12-122)

**Sec. 12-123. Disturbing the Peace.**

It is unlawful to disturb the public peace. Disturbing the peace consists of the intentional engaging in violent, abusive, indecent, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the public peace of others.  
(Code 2007, 12-123)

**Sec. 12-124. Obstructing Movement.**

1. Obstructing movement consists of either:
  - (1) Hindering, annoying or molesting persons passing along any street, sidewalk, crosswalk or other public way; or

(2) Loitering, sitting or standing around at the entrance of any church, public hall, theater, public building or other place of public assemblage in any manner so as to unreasonably obstruct such entrance.

2. Obstructing movement is a misdemeanor.  
(Code 2007, 12-124)

**Sec. 12-125. Unreasonable Noise.**

1. Unreasonable noise consists of creating any unreasonably loud, disturbing or unnecessary noise of such character, intensity or duration as to be detrimental to the repose, life or health of others, including but not limited to, the following specific noises if created in violation of this section:

- (1) The sounding of any horn or signaling device of any automobile, motorcycle, truck or other vehicle on any street or public place, except as a danger warning, which creates an unreasonable, loud or harsh sound or which occurs for an unnecessary and unreasonable period of time. This is not to include noise caused by accident or mechanical, electrical or other difficulty or failure;
- (2) The playing of any radio, television, phonograph, musical instrument or other sound producing machine in such a manner or with such an unreasonable volume as to disturb the quiet, comfort or repose of persons in any dwelling, motel, hotel, hospital or sanatorium;
- (3) The use of any automobile, truck, bus or motorcycle, or any other motorized vehicle or equipment, so out of repair or so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise;
- (4) The use of any loudspeaker, drum, whistle, bell or other instrument or device for the purpose of attracting attention by the creation of sound to any performance, show, sale, display or merchandise or political candidate, party or platform without first obtaining a written permit from the city commission or its designated representative. The city commission or its designated representative shall issue such permit, subject only to such reasonable standards of noise volume and hours of operation as the city commission may adopt;
- (5) The creating of any excessive noise on any street adjacent to any hospital, school institution of learning, church or court which interferes with the workings of such institution or which disrupts or annoys occupants of said buildings.
- (6) The use of a retarder (also commonly known as jake brakes and compression brakes) on any truck, automobile, bus or any other motorized vehicle shall be prohibited from use in the city limits. (Exception; The use of jake brakes is authorized on Navajo Dam Road as it approaches Highway 550 because of the degree of slope on the hill approaching the stop.) Retarder means a device or piece of equipment which helps to slow a vehicle's rate of speed (braking power). When activated, a retarder creates noise through the vehicle's exhaust system. Retarder, for this section, includes any exhaust and/or engine device. The use of a retarder shall not be restricted in an emergency.

2. Unreasonable noise is a misdemeanor.  
(Code 2007, 12-125)

### **Sec. 12-126. Truancy.**

1. Definitions. For the purpose of this section, the following terms, phrases, words and their derivations, shall have the meaning given herein.

#### **Qualified student**

A person as defined in NMSA 1978, § 22-8-2, and any person who because of his age is eligible to be a qualified student as defined in NMSA 1978, § 22-8-2, and/or a person who at the time of the offense is enrolled in kindergarten through twelfth grade.

#### **Parent**

A person who is:

- A natural parent, adoptive parent, or stepparent of a qualified student; or
- At least eighteen (18) years of age and authorized by a parent or guardian to have the care and custody of a qualified student.

#### **Guardian**

A person who is:

- A person who, under court order, is the guardian of the person of a qualified student;  
or
- A public or private agency with whom a qualified student has been placed by a court.

2. Offenses.

(1) A qualified student who is subject to compulsory education or to compulsory continuing/alternative education pursuant to NMSA 1978, § 22-12-2, is guilty of an offense if he is in or upon public streets, public places, places of amusement and eating places, vacant lots or any unsupervised place, during the hours when the qualified student's school is in session. A person shall be excused from the compulsory education requirement if the person:

(a) Is specifically exempted by law from the provisions of this section;

(b) Has graduated from a high school;

(c) Is at least sixteen (16) years of age and has been excused by the local school board or its authorized representative upon a finding that the person will be employed in a gainful trade or occupation or engaged in an alternative form of education sufficient for the person's educational needs and the parent or other person having custody and control consents;

(d) Has the consent of the parent or person having custody and control of the person to be excused, the person is excused from the provisions of this section by the

- superintendent of schools of the school district in which the person is a resident and the person is under eight (8) years of age; or
- (e) Has the consent of the parent or person having control of the person to be excused from school attendance and/or in the immediate control of that parent or person;
  - (f) Is judged, based on standards and procedures adopted by the state board, to be unable to benefit from instruction because of learning disabilities or mental, physical or emotional conditions.
- (2) This section shall not apply to qualified students who are in public places in conjunction with a field trip or program conducted by the student's school or who have been excused pursuant to their school's policies or regulations.
- (3) A parent or guardian of a qualified student is guilty of an offense if he knowingly permits the qualified student to be in violation of subsection (1), above.
3. Penalties. Any person who violates any revision of this section shall, upon conviction, be subject to a fine. Parent(s) or legal guardian(s) having custody or control of a minor in violation of this section, committing a second or subsequent offense shall be liable for the cost of the personnel attending to the minor.
- |                 |   |
|-----------------|---|
| First offense:  | \$100.00 fine or<br>40 hours of community service or<br>30 days of unexcused absences.  |
| Second offense: | \$200.00 fine or<br>80 hours of community service or<br>45 days of unexcused absences.  |
| Third offense:  | \$300.00 fine or<br>120 hours of community service or<br>60 days of unexcused absences. |
4. Exemptions. Nothing in this section shall be construed to apply to home schools established as specified in home school requirements, NMSA 1978, § 22-1-2.1  
(Code 2007, 12-126)

#### **Sec. 12-127. Disorderly House.**

1. It shall be unlawful for any person to keep any common, ill-governed or disorderly house or to suffer any drunkenness, quarreling, fighting, gambling or any riotous or disorderly conduct whatsoever on his premises or the premises under his direct possession or control.
2. A person who violates this section is guilty of a petty misdemeanor.  
(Code 2007, 12-127)

#### **Secs. 12-128 to 12-140. Reserved.**

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**ARTICLE V. OFFENSES AGAINST PUBLIC SAFETY**

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**DIVISION 1. GENERALLY****Sec. 12-141. Removal of Barricades.**

1. Removal of barricades consists of knowingly or willfully removing, destroying or interfering with any barrier, guard or light placed before or at any dangerous place in or near the street, sidewalks or ways of the city for the purpose of warning or protecting travelers from injury or damage; provided that removal after the danger has ceased and temporary removal to allow the passage of a vehicle with immediate subsequent replacement shall not be considered unlawful.
2. Removal of Barricades is a Misdemeanor.  
(Code 2007, 12-141)

**Sec. 12-142. Open Containers.**

1. No driver of any Motor vehicle shall permit to be kept in any motor vehicle anywhere within the city limits any container of any alcoholic beverage which has been opened, or the seal broken, or the contents of which have been partly removed.
2. No person shall be in possession of or have in his immediate control, while occupying a motor vehicle anywhere within the city limits any container of any alcoholic beverage which has been opened or the seal broken, or the contents of which have been partly removed.  
(Code 2007, 12-142)

**Secs. 12-143 to 12-160. Reserved.****DIVISION 2. WEAPONS AND RELATED OFFENSES****Sec. 12-161. Unlawful Carrying of a Deadly Weapon.**

1. Unlawful carrying of a deadly weapon consists of carrying a concealed loaded firearm or any other type of deadly weapon anywhere, except in the following cases:
  - (1) In the person's residence or on real property belonging to him as owner, lessee, tenant or licensee;
  - (2) In a private automobile or other private means of conveyance, for lawful protection of the person's or another's person or property;
  - (3) By a peace officer in accordance with the policies of his law enforcement agency who is certified pursuant to the Law Enforcement Training Act (NMSA 1978, § 29-7-1 et seq.);
  - (4) By a peace officer in accordance with the policies of his law enforcement agency who is employed on a temporary basis by that agency and who has successfully completed a course of firearms instruction prescribed by the state law enforcement academy or provided by a certified firearms instructor who is employed on a permanent basis by a

law enforcement agency; or

(5) On a target range or school range as authorized by law.

2. Nothing in this section shall be construed to prevent the carrying of any unloaded firearm.
3. The following definitions apply to this section:

**Another or other**

Any other human being or legal entity, whether incorporated or unincorporated, including the United States, the State of New Mexico or any subdivision thereof.

**Carrying a deadly weapon**

Being armed with a deadly weapon by having it on the person, or in close proximity thereto, so that the weapon is readily accessible for use.

**Deadly weapon**

Any firearm, bows, arrows, crossbows, whether loaded or unloaded; or any weapon which is capable of producing death or great bodily harm, including but not restricted to any types of dagger, metallic knuckles, switchblade knives, poniard, dirk knives and all other weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, including sword canes, and any kind of sharp pointed cane or rod, also slingshots, slung shots or bludgeon; or any other weapons with which dangerous wounds can be inflicted.

**Firearm**

Any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer. "Firearm" includes any handgun, rifle or shotgun.

**Great bodily harm**

An injury to the person which creates a high probability of death; or which causes serious disfigurement; or which results in permanent or protracted loss or impairment of the function of any member or organ of the body.

**Peace officer**

Any public official or public officer vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes.

4. Unlawful carrying of a deadly weapon is a misdemeanor.  
(Code 2007, 12-161)

**Sec. 12-162. Negligent Use of a Deadly Weapon.**

1. Negligent use of a deadly weapon consists of either:
  - (1) Discharging a deadly weapon into any building or vehicle or so as to knowingly endanger a person or his property;

- (2) Carrying a deadly weapon while under the influence of an intoxicant or a narcotic;
  - (3) Endangering the safety of another or another's property by handling or using a firearm or other deadly weapon in a negligent manner; or
  - (4) Discharging a deadly weapon within one hundred fifty (150) yards of an inhabited dwelling or building without the permission of the owner or lessees thereof.
2. The provisions of above paragraphs (1), (3) and (4) of Section 12-162-1 shall not apply to a peace officer, who is required or authorized by law to carry or use a firearm in the course of his employment and who carries, handles, uses or discharges a firearm while lawfully engaged in carrying out the duties of his office or employment.
  3. The following definitions apply to this section:

**Inhabited dwelling or building**

A dwelling or building which at time of discharge of deadly weapon was or could have been occupied by persons.

**Negligent**

Omitting to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

4. Negligent use of a deadly weapon is a misdemeanor.  
(Code 2007, 12-162)

**Sec. 12-163. Unlawful Propulsion of Missiles.**

1. Unlawful propulsion of missiles consists of shooting, slinging or throwing arrows, snowballs, stones, rocks, pellets, BB-shot or any kind of missile, object or substance in such a manner as to be reasonably likely to cause injury to any person or property within the city.
2. This section shall not be construed to prohibit target firing when conducted so as to secure safety of the inhabitants of the city.
3. Target firing may be permitted on school grounds pursuant to school regulations or when conducted on ranges meeting the safety and other specifications of the National Rifle Association, the New Mexico Bow Hunter's Association, or their equivalents. Operators of such ranges shall maintain such safety certification documents, which they shall present to the police should a question of public safety arise.
4. Unlawful propulsion of missiles is a misdemeanor.  
(Code 2007, 12-163)

**Sec. 12-164. Unlawful Possession, Transfer or Sale of Weapons.**

1. Unlawful possession or transfer of certain weapons consists of possession, selling, lending, giving away or purchasing any form of metallic knuckles, any form of bludgeon, or any knife which has a blade which opens automatically by hand pressure to a button, spring or other

device in the handle of the knife, or which opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement.

2. Unlawful sale of a deadly weapon consists of giving, selling, trading, bartering or exchanging for anything of value any deadly weapon or ammunition for any firearm to any person under the age of eighteen (18) years; however, nothing herein contained shall be construed to prevent any parent or legal guardian from purchasing such a weapon or ammunition for his child or ward so long as the weapon and ammunition used by the child are used while under the supervision of the parent or legal guardian.
3. Unlawful possession or transfer of certain weapons is a misdemeanor. Unlawful sale of a deadly weapon is a misdemeanor.  
(Code 2007, 12-164)

#### **Sec. 12-165. Firing of Rifle or Pistol.**

1. No person shall fire or discharge a rifle, gun, pistol, air rifle or air pistol within the city, except when such is done by lawful authority or in the lawful defense of himself, his family or his property.
2. A person who commits unlawful firing of a rifle, gun, pistol, air rifle or pistol is guilty of a misdemeanor.  
(Code 2007, 12-165)

#### **Secs. 12-166 to 12-180. Reserved.**

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### **ARTICLE VI. OFFENSES AGAINST PUBLIC MORALS**

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#### **Sec. 12-181. Curfew of Minors.**

1. It shall be unlawful for any child who is under the age of eighteen (18) years to be upon any street, alley or public place, or any public building or unoccupied building unless accompanied by a parent, guardian or other person having trust thereof, or engaged in a lawful occupation between the hours of:
  - (1) During school term, including vacation periods:
    - (a) 10:00 p.m. and 5:00 a.m. on Sunday through Thursday nights.
    - (b) 12:00 midnight and 5:00 a.m. on Friday and Saturday nights.
    - (c) 12:00 midnight and 5:00 a.m. on Christmas eve, Christmas night, Halloween night, commencement night and nights on which play and school functions are held, as participants in such functions.
    - (d) 1:00 a.m. and 5:00 a.m. on New Year's Eve.

(2) Summer vacation term:

(a) 11:00 p.m. and 5:00 a.m. on Sunday through Thursday nights.

(b) 12:00 midnight and 5:00 a.m. on Friday and Saturday nights.

2. It shall be unlawful for the parent or guardian of any child under the age of eighteen (18) years to permit the child to violate Section 12-181-1.1(a).

(Code 2007, 12-181)

**Sec. 12-182. Drinking in Public.**

1. Drinking in public consists of drinking or consuming alcoholic liquors (as the term is defined in NMSA 1978, § 60-3A-3):

(1) In any city-owned park, except a park in which drinking is expressly permitted by resolution;

(2) In any public way, except a public way within a city-owned park in which drinking is expressly permitted by resolution. For the purposes of this section, "public way" is defined as the entire width between the property lines of every way publicly maintained when any part thereof is customarily open to the use of the public for purposes of vehicular travel and includes the street, sidewalk, and any other area between the curb lines or lateral lines of the roadway and the adjacent property lines; or

(3) In any city-owned parking lot, except a parking lot in a city-owned park in which drinking is expressly permitted by resolution.

2. Drinking in public places is a misdemeanor.

(Code 2007, 12-182)

**Sec. 12-183. Unlawful to Possess Marijuana.**

1. It shall be unlawful for any person, within the city, to intentionally possess marijuana.

2. Marijuana, for the purposes of this section, means all parts of the plant *Cannabis Sativa* L., whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

3. A person convicted of a violation of this section shall be assessed, in addition to any other fee or fine, a fee of seventy-five dollars (\$75.00) to defray the costs of chemical and other analyses of controlled substances.

(Code 2007, 12-183)

**Sec. 12-184. Obscenity.**

1. Definitions. For purposes of this section, the following terms shall be defined as follows:

**Obscene material**

Material written, pictorial or recorded, which:

- Taken as a whole, appeals to the prurient interest in sex as judged by the average person applying local contemporary community standards;
- Describes or depicts in a patently offensive way any of the following behavior designed or intended to stimulate sexual excitement: the description, depiction or simulated portrayal of the acts of sodomy, fellatio, cunnilingus, masturbation, excretory functions, ejaculation, sexual intercourse, bestiality, sadism or masochism; and
- Taken as a whole, lacks serious literary, artistic, political or scientific value.

**Material**

Any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment or machines.

**Disseminate**

To transfer possession of, with or without consideration.

**Knowingly**

Being aware of the character and the content of the material.

2. Prohibited Conduct. It shall be unlawful for any person to:

- (1) Knowingly sell, show or otherwise disseminate in any obscene material; or
- (2) Knowingly possess obscene material with the intent to sell, show or otherwise disseminate such.

3. Presumption; evidence. For purposes of this section:

- (1) Evidence establishing that any person has in his possession, control, or custody more than five (5) identical copies of any obscene material shall constitute prima facie evidence that that person knowingly possessed obscene material with the intent to disseminate the same; and
- (2) Expert or other affirmative evidence that the materials are obscene shall not be required in a court of law when the materials or activities themselves are presented as evidence.  
(Code 2007, 12-184)

**Sec. 12-185. Prostitution.**

1. Prostitution consists of knowingly engaging in or offering to engage in a sexual act for hire.
2. As used in this section, "sexual act" means sexual intercourse, cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object of the genital or anal opening of another, whether or not there is any emission.
3. Prostitution is a misdemeanor.  
(Code 2007, 12-185)

**Sec. 12-186. Patronizing Prostitutes.**

1. Patronizing prostitutes consists of:
  - (1) Entering or remaining in a house of prostitution or any other place where prostitution is practiced, encouraged or allowed with intent to engage in a sexual act with a prostitute; or
  - (2) Knowingly hiring or offering to hire a prostitute, or one believed by the offer or to be a prostitute, to engage in a sexual act with the actor or another.
2. As used in this section, "a sexual act" means sexual intercourse, cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object of the genital or an anal opening of another whether or not there is any emission.
3. Patronizing prostitutes is a misdemeanor.  
(Code 2007, 12-186)

**Sec. 12-187. Indecent Exposure.**

1. It is unlawful for any person to knowingly and intentionally to expose his intimate parts to public view in a public place, or in any place where there are other persons present who may be offended or annoyed by such action.
2. For the purposes of this section, intimate parts means the mons pubis, penis, testicles, mons veneris, vulva, female breast or vagina.
3. Indecent Exposure is a misdemeanor.  
(Code 2007, 12-187)

**Sec. 12-188. Drug Paraphernalia.**

It shall be unlawful for any person. within the city, to possess any drug paraphernalia, as defined in NMSA 1978 § 30-31-2, as it exists or is amended.  
(Code 2007, 12-188)

**Sec. 12-189. Adult Businesses.**

No person, partnership, corporation, or other organization shall establish or operate an adult oriented business establishment as defined in this section of the Code without first fully complying with Chapter 18, Adult Businesses, obtaining a special use permit (Section 26-8-5), and obtaining a business license from the city (Section 11-32).

(Code 2007, 12-189)

**Secs. 12-190 to 12-205. Reserved.**

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**ARTICLE VII. OFFENSES AGAINST GOVERNMENTAL OPERATIONS**

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**Sec. 12-206. Impersonating Public Officer.**

1. Impersonating a public officer consists of any person:

- (1) Without due authority exercising or attempting to exercise the functions of any peace officer; or
- (2) Falsely assuming or pretending to be a peace officer, justice of the peace (magistrate) or coroner with intent to deceive another.

2. Impersonating a public officer is a misdemeanor.

(Code 2007, 12-206)

**Sec. 12-207. False Report of Crimes.**

It is unlawful for any person to intentionally make or file with the city police department, any false, misleading or unfounded report or statement concerning the commission or alleged commission of any crime which hinders or interrupts any public officer, police officer or any other person in the legal performance of his duty or in the exercise of his rights under the laws of the United States or of this state or city.

(Code 2007, 12-207)

**Sec. 12-208. Resisting, Evading or Obstructing an Officer.**

1. Resisting, evading or obstructing an officer consists of:

- (1) Knowingly obstructing, resisting or opposing any officer of this state or any other duly authorized person serving or attempting to serve or execute any process or any rule or order of any of the courts of this state or any other judicial writ or process;
- (2) Intentionally fleeing, attempting to evade or evading an officer of this state when the person committing the act of fleeing, attempting to evade or evasion has knowledge that the officer is attempting to apprehend or arrest him;
- (3) Willfully refusing to bring a vehicle to a stop when given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal, by a

uniformed officer in an appropriately marked police vehicle; or

(4) Resisting or abusing any judge, magistrate or peace officer in the lawful discharge of his duties.

2. Resisting, evading or obstructing an officer is a misdemeanor.  
(Code 2007, 12-208)

**Sec. 12-209. Escape from Custody.**

1. Escape from the custody of a peace officer consists of any person who shall have been placed under lawful arrest for the commission of any misdemeanor, petty misdemeanor or violation of ordinance, escaping or attempting to escape from the lawful custody or control of a public safety officer.
2. Escape from the custody of a hospital consists of any person who shall have been placed under lawful arrest for the commission of any misdemeanor or petty misdemeanor or violation of an ordinance, escaping or attempting to escape from the lawful custody or control of a hospital to which the person has been assigned.  
(Code 2007, 12-209)

**Sec. 12-210. False Alarms.**

It shall be unlawful for any person to:

1. Give a false fire alarm to any city, county or state official or employee, whether by means of a fire alarm box or otherwise;
2. Knowingly give a false alarm of need for rescue squad, police or ambulance assistance; or
3. Knowingly convey or cause to be conveyed to any police agency or fire department a false report concerning an explosion or the placement of any explosives or explosive or incendiary device or any other destructive substance.  
(Code 2007, 12-210)

**Secs. 12-211 to 12-249. Reserved.**

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**ARTICLE VIII. OFFENSES AGAINST PUBLIC HEALTH - NOISE**

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*(Editor's Note: Ord. 2004-321 was passed and approved by Commission in 2004. However Ord. 2004-321 which created Article VIII. Offenses Against Public Health – Noise failed to be correctly codified in the original City Code Book prior to 2007 and was overlooked in the re-codification of the City Code book conducted in 2007. Ord. 2004-321 has now been incorporated into this Article as of 13 May 2009.)*

**Sec 12-250. Scope and Title.**

Excessive sound is a serious hazard to the public health, welfare, safety, and the quality of life; and, a substantial body of science and technology exists by which excessive sound may be

substantially abated; and, the people have a right to, and should be ensured of, an environment free from excessive sound.

It shall be the policy of the City of Aztec, New Mexico to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life.

**Sec. 12-251. Nuisance Noise.**

Nuisance noise complaints as addressed in Sec. 12-125. Unreasonable Noise are flexible in that they may be enforced or cited solely upon a City official, code or animal enforcement officer or police officers' statement that in his/her opinion the alleged violation was creating an unreasonable nuisance or disturbing the peace. Unreasonable Nuisance Noise complaints shall not require a specific or objective measurement (i.e. decibel meter reading).

**Sec. 12-252. Noise Control (Performance) Regulations.**

1. The Noise Control (Performance) Regulation is a performance based code designed to empower the City and its qualified personnel to respond to noise complaints with specific and measurable sound levels as measured by a regularly calibrated sound level meter in decibels.
2. The response time for the investigation of noise complaints will be influenced by time, distance, case loads and other factors. If the sound source generating the complaint is transient or irregular, this may result in an inability to complete a satisfactory investigation or the necessity for multiple visits over a period of time to document a violation.
3. Public nuisance; abatement; additional remedies.

The operation or maintenance of any device, instrument, vehicle or machinery, in violation of this article, which causes an immediate threat to the health and welfare of persons within the City shall be deemed and is declared to be a public nuisance and may be subject to summary abatement by a restraining order or injunction issued by a court of competent jurisdiction. This is not intended to preclude any other legal remedy that may be had according to law.

4. Evidence of violation.

Excluding violations deemed unreasonable or nuisance noise violations, evidence establishing that an activity is causing or has caused the permissible sound level to be exceeded by more than five decibels at a point designated in any section of this article shall be deemed to be a prima facie evidence of a violation of this article. Sound level measurements taken in order to show such prima facie violation must conform to the procedures as outlined in this section.

5. Procedures for measurements.

Unless otherwise provided in this article, sound level measurements shall be taken with a sound level meter whose microphone is located at any point on the real property boundary or other point as provided in this article, no closer than five feet from any wall or vertical obstruction when possible, and where practicable not less than five feet above ground level,

but in no event less than three feet above ground. A minimum of three readings shall be taken at two-minute intervals. The sound level shall be the average of these readings.

6. Exemption for emergencies, emergency work.

This article shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of verifiable emergency work.

7. Variances.

(1) The City Commission shall have the authority, consistent with this section and public health, welfare, safety, and quality of life to grant special variances to this article which may be requested when it finds or determines that:

- a. Strict conformance with this article would cause an undue or extraordinary hardship upon any person;
- b. The offending noise will be for a short duration and compliance with this article will be impractical;
- c. The benefit to the community of the activity creating the offending noise is greater than the adverse effect on the community of the noise created; or
- d. The applicant needs additional time to modify equipment or take other action in order to comply with this article.

(2) Notice of an application for a variance granted under this section shall be published in the same manner as provided for notice of ordinances and shall be granted only after the matter is considered in a hearing at a regularly scheduled commission meeting.

- a. The City Manager may grant a temporary permit to an applicant for a variance to exceed levels established in this article until action is taken by the City Commission on the application for a variance.

(3) Special variances shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The special variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of a special variance shall terminate it and subject the person holding it to those sections of this article regulating the source of sound or activity for which the special variance was granted. Application for an extension of the time limits specified in special variances or for modification of other substantial conditions shall be treated as are applications for initial variances.

8. Maximum permissible sound levels by receiving land use.

(1) No person shall operate or cause to be operated on private property any source of sound in such a manner as to create a sound level which exceeds the limit set forth for the receiving land use category when measured at or within the property boundary of the receiving land use:

Receiving Land Use District	Time	Sound Level Limit (dBA)
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R-1, R-2, O-1, MH, PUD	Dawn- Dusk	60
	Dusk-Dawn	50
C-1, C-2	Dawn- Dusk	65
	Dusk-Dawn	55
AM	At all times	75

(2) Any person who shall violate this section in a manner which does not constitute an immediate threat to the health and welfare of the City shall, prior to any prosecution in municipal court, be notified in writing that they are in violation and have seven (7) days in which to comply with this section. Such notice shall be served by any one of the following methods:

- 1) served personally,
- 2) by mailing to the violating person(s) to their last known address by certified, return receipt requested mail,
- 3) by providing evidence of hand posting in a conspicuous place on or about the property, or
- 4) a published public notice in the City's publication of record.

Evidence of personal service, mailing, posting or publication versus evidence of receipt shall be adequate to proceed with any violation. If, at the expiration of the seven (7) day period, the violation continues, nothing in this section shall limit the power of the City to enforce this section.

9. Motor vehicles and motorcycles on public rights-of-way.

No person shall operate or cause to be operated a motor vehicle or motorcycle on a public right-of-way at any time in such a manner that the sound level emitted by the motor vehicle or motorcycle exceeds the level set forth in this section:

Vehicle Class	Sound Level Limit (dBA)		
	Speed Limit: 35 mph or less	Speed Limit: 35 mph or more	Run Up
Motor vehicle carrier engaged in interstate commerce of GVWR or GCWR of 8,000 lbs. or more	86	90	88
All other motor vehicles of GVWR or GCWR of 8,000 lbs. or more	84	88	86
Any motorcycle	82	86	84
Any other motor vehicle or any combination of vehicles towed by any motor vehicle	76	82	80

Measurements of the sound levels emitted shall be measured at a point 50 feet from the sound source and at an average revolutions per minute (r.p.m.) one half the distance

between idle and red line, upon which the motor vehicle being measured is traveling. Section 12-251.5 shall not apply to measurements taken to enforce this section.

10. The following are exempt from the operation of this section:

- (1) Emergency vehicles;
- (2) Any motor vehicles engaged in a professional/amateur sanctioned competitive sports event for which an admission/entry fee is charged, or practice/time trials for such event;
- (3) Construction or agricultural equipment either on a job site or traveling on highways, as defined in this section.
- (4) Any public sporting event (such as school games and events, roping, BMX, or similar events)

11. Recreational motorized vehicles operating off public rights-of-way.

- (1) Except as permitted, no person shall operate or cause to be operated any recreational motorized vehicle in such manner that the sound level emitted exceeds 80 dBA at a distance of 50 feet or more and at an average revolutions per minute (rpm) one half the distance between idle and red line, from the path of the vehicle when operated on a public place or at or across the boundary of private property when operated on private property. This section shall apply to all recreational motorized vehicles, whether or not duly licensed and registered, including but not limited to commercial or noncommercial racing vehicles, motorcycles, three and four wheelers, go-carts, snowmobiles, amphibious craft, campers and dune buggies, but not including motorboats. Section 12-251.5. will not apply to measurements taken to enforce this section.
- (2) Any motorized recreational vehicle engaged in a professional or amateur sanctioned competitive sports event for which an admission or entry fee is charged or practice or time trials for such event shall be exempted from this section.

12. Places of public entertainment.

It shall be unlawful for any person to operate, play, or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound in any place of public entertainment at a sound level greater than 90 dBA as read on a sound level meter at any point that is normally occupied by a customer, unless a conspicuous and legible sign is located outside such place, near each public entrance, stating, "Warning: Sound levels within may cause permanent hearing impairment." In no event shall the sound level measured as indicated in this section exceed 110 dBA.

13. Time limits for construction activity; operation of power tools in residential areas.

- (1) It shall be unlawful for any person to do, perform or engage in any construction work of any nature in the City between published dusk of one day and published dawn of the next day, if any such activity shall cause noises whose levels result in excess of the

limits as stated in this section. This subsection shall not prohibit any work performed because of emergency as defined in this section.

- (2) It shall be unlawful to operate or permit the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, snow or leaf blower or similar device used outdoors in residential areas between published dusk of one day and published dawn of the next day so as to cause the sound level limits established to be exceeded at the property line. At no time shall the sound level caused by or emitted from any of such tools exceed 90 dBA at the property line.

Receiving Land Use District	Time	Sound Level Limit (dBA)
R-1, R-2, O-1, MH, PUD	Dawn- Dusk	60
	Dusk-Dawn	50
C-1, C-2	Dawn- Dusk	65
	Dusk-Dawn	55
AM	At all times	75

#### 14. Noise sensitive zones.

It shall be unlawful for any person to create any noise which exceeds the sound level of 50 dBA as measured within 20 feet from any exterior wall of any hospital, school, nursing home, or church or other religious building while services are being held.

#### 15. Airport and aircraft operations.

- (1) The intent and purpose of this section is to regulate the noise levels produced in the testing, run-up, maintenance and repairing of aircraft engines and aircraft in the nighttime hours and to abate the nuisance to the residents of the City created by such noise.
- (2) It is unlawful for any person to operate, run-up, test, maintain or repair any vehicle, aircraft, engine or aircraft engine that generates noise which may be heard beyond the confines of the Aztec Airport between the hours of 10:00 p.m. and 6:00 a.m., local time, except that:
- Vehicles, aircraft, engines, or aircraft engines may be tested, run-up, maintained or repaired at designated run up areas at the Aztec Municipal Airport according to rules promulgated and established by the Airport Manager, City manager which have been approved by the City commission.
  - Aircraft may be operated pursuant to applicable Federal Aviation Administration regulations for the purpose of normal takeoff and landing which may include temporary run-up of aircraft engines in areas designated by the City as part of the normal safety check prior to aircraft takeoff.
  - Each violation of this section that exceeds five (5) minutes shall be deemed to be a separate violation of this section.

#### 16. Animals and birds.

It shall be a violation of Sec. 5-16 of the Aztec City Code to harbor or keep any animals which disturb the peace by loud noises at any time of the day or night.

#### 17. Street sales.

It shall be a violation of this article for any person to shout or make outcry or use any drum, loudspeaker or other instrument or device for the purpose of attracting attention by the creation of noise to any sale or display of merchandise.

#### 18. Motor vehicle horns and signaling devices.

It shall be a violation of this article to:

- (1) sound any horn or other auditory signaling device on or in any motor vehicle on any public right-of-way or public space, except as a warning of danger; or
- (2) sound any horn or other auditory signaling device which produces a sound level in excess of 95 dBA at 50 feet.

#### **Secs. 12-253 to 12-259. Reserved.**

#### **Sec. 12-260 Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. (All technical terminology used in this article not defined in this section shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.)

#### **A-weighted sound level**

The sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dBA.

#### **Construction**

Any site preparation, assembly, erection, substantial repair, alteration, drilling, work-over rigs or similar action, including demolition, for or of public or private rights-of way, structures, utilities or similar property.

#### **Decibel**

A unit for measuring the volume of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micro-newtons per square meter).

#### **Emergency**

Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

**Emergency vehicle**

The same as ascribed to it in state statute.

**Emergency work**

Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

**Gross vehicle weight rating**

The value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. When trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

**Motor carrier vehicle engaged in interstate commerce**

Any vehicle for which regulations apply pursuant to section 18 of the Federal Noise Control Act of 1972 (PL 92-574), as amended, pertaining to motor carriers engaged in interstate commerce.

**Muffler**

A properly functioning sound dissipative device or system for abating the sound escaping on equipment or vehicles where such a device is part of the normal configuration of the equipment or vehicle.

**Noise**

Any sound which is unwanted, excessive, offensive, or otherwise disturbing to persons of normal sensitivities or exceeds the values established in Section 12-252.

**Person**

Any individual, association, partnership, or corporation, and includes any officer, employee, department, agency or instrumentality of a state or any political subdivision of a state.

**Public place**

Any real property or structure thereon which is owned or controlled by a governmental entity.

**Public right-of-way**

Any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

**Real property boundary**

An imaginary line along the ground surface and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

**Sound**

An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of sound, including duration, intensity and frequency.

**Sound level**

The A-weighted sound pressure level obtained by the use of a sound level meter as defined in this section.

**Sound level meter**

An instrument meeting specifications of the American National Standards Institute for a type I or type II sound level meter which uses the A-weighting network.