

Title 5

GENERAL OFFENSES

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Chapter 5.10**GENERAL OFFENSES**

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5.10.010 Definitions.

A. "Bodily injury" means physical pain, illness, or any impairment of physical or mental function.

B. "Drug paraphernalia" means all equipment, products, and material of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the ordinances of this city. "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 ordinances of this city;
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 marijuana;
 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;
 7. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - 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 marijuana 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. Carburetor pipes;
 - i. Electric pipes;
 - j. Air-driven pipes;
 - k. Chillums;
 - l. Bongs;
 - m. Ice pipes or chillers.
- C. "Ethyl alcohol" means any substance which is or contains ethyl alcohol.
- D. "Intentionally" or "with the intent" means offenses defined herein in which the mental culpability requirement is expressed as "intentionally" or "with the intent" are declared to be specific intent offenses. A person acts "intentionally" or "with the intent" when his conscious objective is to cause the specific result proscribed herein as an offense. It is immaterial to the issue of specific intent whether or not the result actually occurred.
- E. "Knowingly" means offenses defined herein in which the mental culpability requirement is expressed as "knowingly" are declared to be general intent offenses. A person acts "knowingly" with respect to conduct or to a circumstance described herein when he is aware that his conduct is of such nature or

that such circumstance exists. A person acts “knowingly,” with respect to a result of his conduct, when he is aware that his conduct is practically certain to cause the result.

- F. “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 sterilized seeds of the plant which are incapable of germination, if these items exist apart from any other item defined as “marijuana.” “Marijuana” does not include marijuana concentrate, hashish, hydrocannabinols, or any alkaloid, salt derivative preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol.
- G. “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.
- H. “Possession of ethyl alcohol” means that a person has or holds any amount of ethyl alcohol anywhere on his/her person, or that a person owns or has custody of ethyl alcohol, or has ethyl alcohol within his/her immediate presence and control.
- I. “Premises” means real property, buildings, and other improvements thereon, and the stream banks and beds of any nonnavigable fresh water streams flowing through such real property, or privately owned motor vehicles or conveyances.
- J. “Private property” means any dwelling and its curtilage which is being used by a person and/or persons for habitation which is not open to the public or privately owned real property which is not open to the public.
- K. “Public place” means a place to which the public or a substantial number of the public has access, and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities.
- L. “Recklessly” means a person acts recklessly when he consciously disregards a substantial and unjustifiable risk that a result will occur or that a circumstance exists.
- M. “Serious bodily injury” means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree.
- N. “Toxic vapors” means the following substances or products containing such substances:
1. Alcohols, including methyl, isopropyl, propyl, or butyl;
 2. Aliphatic acetates, including ethyl, methyl, propyl, or methyl cellosolve acetate;
 3. Acetone;
 4. Benzene;
 5. Carbon tetrachloride;
 6. Cyclohexane;

7. Freons, including freon 11 and freon 12;
8. Hexane;
9. Methyl ethyl ketone;
10. Methyl isobutyl ketone;
11. Naphtha;
12. Perchloroethylene;
13. Toluene;
14. Trichloroethane; or
15. Xylene. (Code 1997 § 5-1-1).

5.10.020 Abusing toxic vapors.

- A. No person shall knowingly smell or inhale the fumes of toxic vapors for the purpose of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system. No person shall knowingly possess, buy, or use any toxic vapor for the purposes described in this section, nor shall any person knowingly aid any other person to use any such substance for the purposes described in this section. This section shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.
- B. During any trial for a violation of this section, any bottle, can, or any other container with labeling indicating the contents of such bottle, can, or container shall be admissible into evidence, and the information contained on any label on such bottle, can, or other container shall be admissible into evidence and shall not constitute hearsay. Evidence that the bottle, can, or other container lists one or more of the substances defined as toxic vapors as one of its ingredients shall be prima facie evidence that the substance in such container contains toxic vapors and emits the fumes thereof.
- C. Abusing toxic vapors is a petty offense. (Code 1997 § 5-1-2).

5.10.030 Assault.

- A. No person shall knowingly or recklessly cause bodily injury to another person.
- B. Assault is a misdemeanor. (Code 1997 § 5-1-3).

5.10.040 Conspiracy.

- A. A person commits conspiracy to commit a crime if, with the intent to promote or facilitate its commission, he/she agrees with another person or persons that they, or one or more of them, will engage in conduct which constitutes a crime or an attempt to commit a crime, or he/she agrees to aid the other person or persons in the planning or commission of a crime or of an attempt to commit such crime.
- B. No person may be convicted of conspiracy to commit a crime unless an overt act in pursuance of that conspiracy is proved to have been done by him/her or by a person with whom he/she conspired.
- C. If a person knows that one with whom he/she conspires to commit a crime has conspired with another person or persons to commit the same crime, he/she is guilty of conspiring to commit a crime with the other person or persons, whether or not he/she knows their identity.

- D. If a person conspires to commit a number of crimes, he/she is guilty of only one conspiracy so long as such multiple crimes are part of a single criminal episode.
- E. It is an affirmative defense to a charge of conspiracy that the offender, after conspiring to commit a crime, thwarted the success of the conspiracy under circumstances manifesting a complete and voluntary renunciation of his criminal intent.
- F. Conspiracy is a petty offense. (Code 1997 § 5-1-4).

5.10.050 Criminal attempt.

- A. A person commits criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he/she engages in conduct constituting a substantial step toward the commission of the offense. A substantial step is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be, nor is it a defense that the crime attempted was actually perpetrated by the accused.
- B. It is an affirmative defense to a charge of criminal attempt that the defendant abandoned his/her effort to commit the crime or otherwise prevented its commission, under circumstances manifesting the complete and voluntary renunciation of his/her criminal intent.
- C. Criminal attempt is a petty offense. (Code 1997 § 5-1-5).

5.10.060 Criminal mischief.

- A. No person shall knowingly damage the real or personal property of another person.
- B. No person shall injure, mark, or deface any trees or flowers planted for ornament or shade of the streets or private lots.
- C. No person shall throw stones, snowballs, water-filled balloons, or other missile against or upon or in any way deface or injure any building, tree, vehicle, or person, whether on public or private property.
- D. Criminal mischief is a misdemeanor. (Code 1997 § 5-1-6).

5.10.070 Criminal trespass.

- A. No person shall unlawfully enter or remain in or upon the premises of another without permission.
- B. Criminal trespass is a petty offense. (Code 1997 § 5-1-7).

5.10.080 Disorderly conduct.

- A. No person shall make a coarse and obviously offensive utterance, gesture, or display in a public place, and the utterance, gesture, or display tends to incite an immediate breach of peace.
- B. No person shall abuse or threaten a person in a public place in an obviously offensive manner.
- C. No person shall permit another to commit an act of disturbing the peace as described in this section in or upon any premises owned, possessed, or under his/her management or control when it is in his/her power to prevent such an act.
- D. No person shall urinate or defecate in a public place or upon private property visible from a public place.

- E. No person shall fight with another in a public place, except in an amateur or professional contest of athletic skills.
- F. Violation of subsections (A), (B), (C), and (D) of this section are petty offenses. Violation of subsection (E) of this section is a misdemeanor. (Code 1997 § 5-1-8).

5.10.090 Disturbing the peace.

- A. No person shall in a public or private place make, continue, or cause to be made or continued any unreasonably loud or unusual noise which seriously inconveniences other persons in the area. For the purpose of this section, a member of the police department is empowered to make a prima facie determination as to whether such noises constitute a public nuisance.
- B. No person shall permit another to commit an act of disturbing the peace as described above in or upon any premises owned, possessed, or under his management or control when it is in his power to prevent such an act.
- C. Noise caused in the performance of emergency work for the immediate safety, health, or welfare of the community or individuals of the community shall not be subject to the provisions of this chapter.
- D. Applications for a permit to hold a public event which may violate the provisions of this chapter shall be made to the city manager or his duly authorized representative. Such permit shall be valid only at the specific times, dates, and conditions noted in the permit.
- E. Disturbing the peace is a misdemeanor. (Code 1997 § 5-1-9).

5.10.100 Disturbing a lawful assembly.

- A. No person shall, with the intent to prevent or disrupt any lawful meeting, procession, or gathering, significantly obstruct or interfere with the meeting, procession, or gathering by physical action, verbal utterance, or any other means.
- B. Disturbing a lawful assembly is a misdemeanor. (Code 1997 § 5-1-10).

5.10.110 False reporting.

- A. No person shall knowingly cause a false alarm of fire or other emergency to be transmitted to any government agency which deals with emergencies involving danger to life or property.
- B. No person shall report or knowingly cause the transmission of a report to law enforcement authorities of a crime or other incident within their official concern when he knows that it did not occur.
- C. No person shall report or knowingly cause 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 knows that he has no such information or knows that the information is false.
- D. False reporting is a misdemeanor. (Code 1997 § 5-1-11).

5.10.120 Harassment.

- A. No person shall, with the intent to harass or annoy another, strike, shove, kick, or otherwise touch or subject an individual to physical contact.
- B. No person shall, with the intent to harass or annoy another, initiate communication with a person, anonymously or otherwise by telephone, in a manner intended to harass or threaten bodily injury or property damage, or make any comment, request, suggestion, or proposal by telephone which is obscene.

- C. No person shall, with the intent to harass or annoy another, make a telephone call or cause a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation.
- D. No person shall, with the intent to harass or annoy another, make repeated communications at inconvenient hours or in offensively coarse language.
- E. No person shall knowingly, by threat or physical action, place another in fear of imminent bodily injury.
- F. Harassment is a misdemeanor. (Code 1997 § 5-1-12).

5.10.130 Indecent exposure.

- A. No person shall perform in a public place, or where the conduct may reasonably be expected to be viewed by members of the public, an act of sexual intercourse, deviant sexual intercourse, lewd exposure of the body done with the intent to arouse or satisfy the sexual desire of any person, or lewd fondling or caressing of the body of another person. No person shall knowingly expose his genitals to the view of any person over the age of 14 under circumstances in which such conduct is likely to cause affront or alarm to the other person.
- B. Indecent exposure is a misdemeanor. (Code 1997 § 5-1-13).

5.10.140 Obstructing a peace officer or firefighter.

- A. No person shall obstruct a peace officer or firefighter by using or threatening to use violence, force, physical interference, or an obstacle to knowingly obstruct, impair, or hinder the enforcement of the city ordinances, the preservation of the peace, the prevention, control, or abatement of a fire by a peace officer or firefighter, acting under the color of his/her official authority.
- B. Obstructing a peace officer or firefighter is a misdemeanor. (Code 1997 § 5-1-14).

5.10.150 Obstructing highway or other passageway.

- A. No person shall intentionally, knowingly, or recklessly, without legal privilege:
 - 1. Obstruct a highway, street, sidewalk, 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
 - 2. Disobey a reasonable request or order to move issued by a person he knows to be a peace officer, a fireman, 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 disbursing those gathered in dangerous proximity to a fire, riot, or other hazard.
- B. For purposes of this section, “obstruct” means to render impassable or to render passage unreasonably inconvenient or hazardous.
- C. Obstructing a highway or other passageway is a petty offense.
- D. Penalty. Upon conviction of a violation of this section, a person shall be fined the sum of \$100.00. Upon conviction of a violation of this section, in addition to any fine, a person may be required to perform useful public service. (Ord. 5-1997 §§ 1, 2; Code 1997 § 5-1-15).

5.10.160 Possession of drug paraphernalia.

- A. No person shall possess drug paraphernalia if he/she knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the law.

B. Possession of drug paraphernalia is a petty offense. (Code 1997 § 5-1-16).

5.10.170 Drug paraphernalia, determination, considerations.

A. In determining whether an object is drug paraphernalia, the 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 GMC 5.10.160.
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. Existence and scope of legal uses for the object in the community.
11. Expert testimony concerning its use.

B. In the event a case brought pursuant to GMC 5.10.160 is tried before a jury, the court shall hold an evidentiary hearing on issues raised pursuant to this section. Such hearing shall be conducted in camera. (Code 1997 § 5-1-17).

5.10.180 Possession of less than one ounce of marijuana.

A. No person shall possess, display, consume, or use not more than one ounce of marijuana.

B. Possession, display, consumption, or use of not more than one ounce of marijuana is a petty offense. (Code 1997 § 5-1-18).

5.10.190 Prostitution.

A. No person shall perform, offer to perform, or agree to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse, with any person not his/her spouse, in exchange for money or other things of value.

B. No person shall by word, gesture, or action endeavor to further the practice of prostitution in any public place or within public view.

C. No person shall engage in an act of sexual intercourse or deviate sexual conduct with a prostitute.

D. Prostitution is a misdemeanor. (Code 1997 § 5-1-19).

5.10.200 Theft.

- A. No person shall knowingly obtain or exercise 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 and benefit of the thing of value; or
 2. Knowingly uses, conceals, or abandons the 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 the thing of value intending that such use, concealment, or abandonment will deprive the other person permanently of its use or benefit; or
 4. Demands any consideration to which he/she is not legally entitled as a condition of restoring the thing of value to the other person.
- B. If any person knowingly 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/her own person or otherwise, and whether on or off the premises of said store or mercantile establishment, such concealment constitutes prima facie evidence that the person intended to commit the crime of theft.
- C. If any person conceals upon his person or otherwise and carries away any unpurchased goods, wares, or merchandise held or owned by any store or mercantile establishment, the merchant or any employee thereof or any peace officer, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning of a person by a merchant, merchant's employee, or peace or police officer does not render the merchant, merchant's employee, or peace officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.
- D. This section does not apply if the thing of value is over \$100.00.
- E. Theft is a misdemeanor. (Code 1997 § 5-1-20).

5.10.210 Theft of rental property.

- A. No person, having lawfully obtained possession for temporary use of the personal property of another which is available only for hire, shall knowingly fail to reveal the whereabouts of or to return said property to the owner thereof or his representative or to the person from whom he has received it within 72 hours after the time at which he agreed to return it.
- B. This section does not apply if the value of the rental property is over \$100.00.
- C. Theft of rental property is a petty offense. (Code 1997 § 5-1-21).

5.10.220 Consumption of malt, vinous, or spirituous liquors in public places.

- A. No person shall consume malt, vinous, or spirituous liquors, as defined under the Colorado Liquor Code, in or upon any public park of the city of Gunnison, or any public highway, street, or alley within the city of Gunnison, unless such place is licensed to sell alcoholic beverages for consumption upon such premises pursuant to part 1 of article 48 of title 12, C.R.S.
- B. Public consumption of malt, vinous, or spirituous liquors is a misdemeanor. (Ord. 6-2005 § 1; Ord. 3-1998 § 1; Code 1997 § 5-1-22).

5.10.230 Underage possession or consumption of ethyl alcohol.

- A. No person under 21 years of age shall possess or consume ethyl alcohol.
- B. It shall be an affirmative defense to the offense described in this section that the ethyl alcohol was possessed or consumed by a person under 21 under the following circumstances:
1. While such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such private property and the ethyl alcohol was possessed or consumed with the consent of his/her parent or legal guardian who was present during such possession or consumption; or
 2. When the existence of ethyl alcohol in a person's body was due solely to the ingestion of a confectionery which contained ethyl alcohol within the limits prescribed in the Colorado Revised Statutes, or the ingestion of any substance which was manufactured, designed, or intended solely for medicinal or hygienic purposes, or solely from the ingestion of a beverage which contained less than one-half of one percent of ethyl alcohol by weight; or
 3. The possession or consumption of ethyl alcohol which takes place for religious purposes protected by the First Amendment of the United States Constitution.
- C. Prima facie evidence of a violation of GMC 5.10.220 shall consist of:
1. Evidence that the defendant was under 21 years of age and possessed or consumed ethyl alcohol;
 2. Evidence that the defendant was under 21 years of age and manifested any of the characteristics commonly associated with ethyl alcohol intoxication or impairment.
- D. Illegal possession or consumption of alcohol by an underage person is a petty offense. (Code 1997 § 5-1-23).

5.10.240 Underage purchase of ethyl alcohol.

- A. It shall be unlawful for any person to obtain or attempt to obtain ethyl alcohol by misrepresentation of age or by any other method in a place where ethyl alcohol is sold when such person is under 21 years of age.
- B. Underage purchase of ethyl alcohol is a petty offense. (Code 1997 § 5-1-24).

5.10.250 Evidence of ethyl alcohol.

During any trial for violation of GMC 5.10.210 or 5.10.220, any bottle, can, or any other container with labeling indicating the contents of such bottle, can, or container shall be admissible into evidence, and information contained on any label on such bottle, can, or other container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can, or other container are composed in whole or in part of ethyl alcohol. A label which identifies the contents of any bottle, can, or other container as "beer," "ale," "malt beverage," "fermented malt beverage," "malt liquor," "wine," "champagne," "whiskey," "gin," "vodka," "tequila," "schnapps," "brandy," "cognac," "liqueur," "cordial," "alcohol," or "liquor" shall constitute prima facie evidence that the contents of the bottle, can, or other container was composed in whole or in part of ethyl alcohol. (Code 1997 § 5-1-25).

5.10.260 Weapon offenses.

- A. No person shall discharge any firearm, airgun, BB gun, slingshot, bow, or any toy gun projecting lead or any missiles except in a regularly established shooting gallery or range.

- B. No person shall carry any firearm, whether loaded or not, into any premises licensed to sell alcoholic beverages.
- C. Nothing in this section shall prohibit a law enforcement officer from carrying a weapon or firearm, or discharging a weapon or firearm, in the lawful performance of his/her duties.
- D. Weapons offenses are misdemeanors. (Code 1997 § 5-1-26).

5.10.270 Closure of public parks.

- A. No person shall enter or remain upon a park of the city of Gunnison between the hours of 12:00 midnight and 5:00 a.m. local time, except when such person is in attendance at an event either sponsored by or expressly permitted, in writing, by the city of Gunnison parks and recreation department.
- B. Violation. Violation of the public park closure is a petty offense.
- C. Upon conviction of an offense of this section a person shall be fined the sum of \$100.00. (Code 1997 § 5-1-27).

5.10.280 Applicability to juveniles.

The ordinances of the city of Gunnison are applicable to juveniles over the age of 14, except that a juvenile may not be incarcerated pre- or post-adjudication. (Code 1997 § 5-1-28).

5.10.290 Penalties.

- A. Upon conviction of an offense set forth in this chapter which is classified as a misdemeanor, a person shall be fined in a sum not to exceed \$1,000 for any one offense or imprisoned for a period not exceeding 90 days, or both such fine and imprisonment.
- B. Upon conviction of an offense set forth in this chapter which is classified as a petty offense, a person shall be fined the sum of \$100.00.
- C. Upon conviction for any offense set forth in this chapter, in addition to any fine or imprisonment, a person may be required to perform useful public service. (Code 1997 § 5-1-29).

5.10.300 Surcharges levied on certain offenses.

- A. A surcharge in the sum of \$30.00 is hereby levied upon each criminal action resulting in a conviction or in a deferred judgment and sentence of the following sections of this code: GMC 5.10.080, 5.10.090, 5.10.220, 5.10.230, and 5.10.240. The surcharge shall be paid to the municipal court clerk by the defendant in such action, who shall transmit the sums collected to Safe Ride of Gunnison County, Inc.
- B. The surcharge levied pursuant to this section is separate and distinct from any costs or fines levied or imposed pursuant to this code.
- C. Safe Ride of Gunnison County, Inc., shall submit to the city council of the city of Gunnison, in writing, a financial report setting forth its sources of funds and all expenditures at least once during each calendar year. (Ord. 11-1999 §§ 1, 2; Code 1997 § 5-1-30).

Chapter 5.20**TRAFFIC**

Sections:

- 5.20.010 Adoption.
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- 5.20.030 Penalties.
- 5.20.040 Application.
- 5.20.050 Validity.
- 5.20.060 Repeal.
- 5.20.070 Interpretation.
- 5.20.080 Certification.

5.20.010 Adoption.

Pursuant to parts 1 and 2 of article 16 of title 31, C.R.S., as amended, there is hereby adopted by reference Articles I and II, inclusive, of the 2003 Edition of the "Model Traffic Code for Colorado," promulgated and published as such by the Colorado Department of Transportation, Safety and Traffic Engineering Branch, 4201 East Arkansas Avenue, EP 700, Denver, Colorado 80222. The subject matter of the Model Traffic Code relates primarily to comprehensive traffic control regulations for the city. The purpose of this chapter and the code adopted herein is to provide a system of traffic regulations consistent with state law and generally conforming to similar regulations throughout the state and the nation. Three copies of the Model Traffic Code adopted herein are now filed in the office of the clerk of the city of Gunnison, Colorado, and may be inspected during regular business hours. (Ord. 8-2003 § 1; Code 1997 § 5-2-1).

5.20.020 Additions or modifications.

The said adopted code is subject to the following additions or modifications:

Part 1, Section 109(9), Restricted Use of Snowmobiles, Skis, Toboggans, Coasters, Skates, and Similar Devices, is hereby amended to read as follows:

- (a) Except as provided in subsection b of this section, it shall be lawful for persons to use any street or highway within this municipality for traveling on roller skis, coasters, roller skates, skateboards, or similar devices.
- (b) It shall be unlawful for persons to use U.S. Highway 50, also known as Tomichi Avenue, and Colorado Highway 135, also known as Main Street, for traveling on roller skis, coasters, roller skates, skateboards, or similar devices, except while crossing these streets in a crosswalk, and when so crossing, such person shall be granted all the rights and shall be subject to all of the duties applicable to pedestrians.
- (c) Every person traveling on roller skis, coasters, roller skates, skateboards, or similar devices upon a roadway where their travel is permitted shall be granted all of the rights and shall be subject to all of the duties and penalties applicable to the driver of a vehicle as set forth in this code, except those provisions of this code which, by their very nature, can have no application. Said persons shall also comply with special rules set forth in this article. Whenever the word "vehicle" is used in any of the driving rules set forth in this code that are applicable to users of roller skis, coasters, roller skates, skateboards, and other similar devices, such term shall include the aforementioned.
- (d) Every person traveling on roller skis, coasters, roller skates, skateboards, or similar devices shall obey the instructions of official traffic control devices applicable to vehicles, unless otherwise directed by a police officer.

- (e) Persons traveling on roller skis, coasters, roller skates, skateboards, or similar devices shall not impede the normal flow of traffic or travel in such a manner as to disrupt the normal flow of traffic.
- (f) Every person traveling on roller skis, coasters, roller skates, skateboards, or similar devices upon a street or highway shall ride as close to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.
- (g) Persons traveling on roller skis, coasters, roller skates, skateboards, or similar devices shall not ride more than two abreast except on lanes or parts of roadways set aside for their use.
- (h) No person traveling on roller skis, coasters, roller skates, skateboards, or similar devices shall attach the same or himself to any vehicle being operated upon the roadway.
- (i) No person shall travel on roller skis, coasters, roller skates, skateboards, or similar devices on sidewalks or areas designated for pedestrian use.
- (j) No person shall use any street or highway within this municipality for traveling on toboggans or coasting sleds, and it shall be unlawful for any person to use the roadways within this municipality as a sled course for the purpose of coasting on sleds or toboggans.
- (k) A snowmobile may be operated on streets and highways under the jurisdiction of this municipality only when such operation is authorized by special ordinance or addition to this code and appropriate notice is given thereof, and then only in the manner and on such streets prescribed by such ordinance consistent with the provisions of state law.

Part 12, Section 1203, Parking Not to Obstruct Traffic or Maintenance, is amended by the addition of the following:

Parking Not to Obstruct Traffic or Maintenance. No person shall park any vehicle upon a street or highway in such a manner or under such conditions as to interfere with the free movement of vehicular traffic or proper street or highway maintenance.

Part 12, Section 1205, Parking at Curb or Edge of Roadway, is amended by the addition of:

(3)(a). On those streets which have been approved and signed or marked for angle parking, no person shall stop, stand, or park a vehicle other than at an angle to the curb at the edge of the roadway indicated by such signs or markings with its right front wheel within 12 inches of the curb or edge of the roadway.

Part 12, Section 1206, Unattended Motor Vehicles, is amended by the addition of:

(1) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, and effectively setting the brake thereon, and when standing upon any grade, said person shall turn the front wheels to the curb or side of the highway in such a manner as to prevent the vehicle from rolling onto the traveled way.

(2) No person driving or in charge of a diesel engine motor vehicle shall permit it to idle, whether attended or unattended, for a period in excess of 30 minutes in any one-hour period anywhere within the city, other than a location designated for such activities by either the city manager or the chief of police.

Part 18, Towing and Storage, is amended by the addition of:

Section 1801. Authority to Impound Vehicles.

(a) Whenever any police officer or neighborhood services officer finds a vehicle, attended or unattended, standing upon any portion of a street or highway right-of-way within this municipality in such a manner as to constitute a violation of Section 1203 of this code, or left unattended for a period of 48 hours or more and presumed to be abandoned under the conditions described by Section 42-4-1802(1), C.R.S., as amended, such officer shall require such vehicle to be removed or cause the same to be removed and placed in storage in the nearest garage or place of safety designated or maintained by this municipality.

(b) In the event of abandonment of a vehicle on property within this municipality other than public rights-of-way, the owner of such property may notify the police department, and said police shall, after a period of 48 hours, cause said vehicle to be removed and placed in storage in the nearest garage or other place of safety designated or maintained by this municipality.

(c) Vehicles removed from streets or highways and other property within this municipality and placed in storage as provided in Section 1801 of this code shall be disposed of in accordance with the provisions of the Revised Colorado Statutes.

(d) Whenever a police officer or neighborhood services officer orders the towing of a vehicle, and the police officer knows or is able to ascertain the name and address of the owner thereof, such police officer shall give or cause to be given notice in writing to such owner of the fact of such removal, and the reasons therefor, and of the place to which such vehicle has been removed. In the event any such vehicle is stored in an authorized garage, a copy of such notice shall be given to the proprietor of such garage. The written notice shall also contain the following statement:

A police officer or neighborhood services officer has ordered the towing of your vehicle. If you feel that the impoundment of your vehicle was improper, you have 10 days from the date of this notice to file a written request with the Gunnison municipal court located at 201 West Virginia Avenue, Gunnison, Colorado 81230, for a hearing regarding the propriety of this impoundment. Such hearing shall be scheduled on the earliest regularly-scheduled municipal court date from the date your written request is received by the Gunnison municipal court. The court shall be empowered to waive the towing and storage fees, if it is found that the impoundment was improper. The retrieval of your vehicle from impoundment does not waive your right to a subsequent hearing and reimbursement. In conjunction with a request for a hearing, you are encouraged to also contact the watch commander of the Gunnison police department for purposes of resolving a dispute concerning the impoundment of your vehicle without the necessity of having a formal hearing.

The written notice shall be deposited in the United States Mail within 24 hours from the time of the impoundment of the vehicle, excluding Saturday, Sunday, and holidays. The written notice may also be personally handed to the owner.

(e) A hearing shall be conducted before the Gunnison municipal court on the earliest regularly-scheduled municipal court date from the date of receipt of a written demand therefor from the person seeking the hearing, unless such person waives the right to a speedy hearing in writing. Saturdays, Sundays, and city holidays are to be excluded from the calculation of the period. The sole issue before the court shall be whether there was probable cause to impound the vehicle in question.

"Probable cause to impound" shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that there was sufficient breach of law to grant legal authority for the removal of the vehicle.

The court shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vehicle. The city of Gunnison shall carry the burden of establishing that there was probable cause to impound the vehicle in question. The burden of proof shall be by a preponderance of the evidence. The decision shall be a final decision of the Gunnison municipal court. Failure of the registered or legal owner, or his agent, to request or attend a scheduled post-seizure hearing shall be deemed a waiver of the right to such hearing.

(f) Upon a determination by the court that the subject vehicle was improperly towed, the city of Gunnison shall either fully reimburse the owner of the impounded vehicle for all towing and storage fees paid by the owner, or directly pay the towing and storage company for accrued fees.

(g) The hearing and reimbursement provisions contained in this section shall only be applicable to vehicles which have been impounded by order of a police officer or neighborhood services officer.

(h) The requirements contained within this section relating to compliance with time periods are directory in nature. Failure of the city to strictly comply with said time periods shall not cause an automatic forfeiture of the city's rights.

(Ord. 8-2003 § 2; Ord. 2-2003 § 1; Code 1997 § 5-2-2).

5.20.030 Penalties.

The following penalties, herewith set forth in full, shall apply to this chapter:

- A. It is unlawful for any person to violate any of the provisions adopted in the ordinance codified in this chapter.
- B. Every person convicted of a violation of any provision adopted in the ordinance codified in this chapter shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding 90 days, or by both such fine and imprisonment. (Ord. 8-2003 § 3; Code 1997 § 5-2-3).

5.20.040 Application.

This chapter shall apply to every street, alley, sidewalk area, driveway, park, and to every other public way or public place or public parking area, either within or outside the corporate limits of this municipality, the use of which the municipality has jurisdiction and authority to regulate. The provisions of Sections 1401, 1402, 1413, and 606 of the adopted Model Traffic Code, respectively, concerning reckless driving, careless driving, eluding a police officer, and unauthorized devices, shall apply not only to public places and ways, but also throughout this municipality. (Ord. 8-2003 § 4; Code 1997 § 5-2-4).

5.20.050 Validity.

If any part or parts of this chapter are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed the ordinance codified in this chapter and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid. (Ord. 8-2003 § 5; Code 1997 § 5-2-5).

5.20.060 Repeal.

Existing or parts of ordinances covering the same matters as embraced in the ordinance codified in this chapter are hereby repealed, and all ordinances or parts of ordinances inconsistent with the provisions of the ordinance codified in this chapter are hereby repealed, except that this repeal shall not affect or pre-

vent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of the ordinance codified in this chapter. (Ord. 8-2003 § 6; Code 1997 § 5-2-6).

5.20.070 Interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to conform with the state's uniform system for the regulation of vehicles and traffic. Article and section headings of this chapter and adopted Model Traffic Code shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or extent of the provisions of any article or section thereof. (Ord. 8-2003 § 7; Code 1997 § 5-2-7).

5.20.080 Certification.

The city clerk shall certify to the passage of the ordinance codified in this chapter and make not less than three copies of the adopted code available for inspection by the public during regular business hours. (Ord. 8-2003 § 9; Code 1997 § 5-2-8).

Chapter 5.30**NUISANCES**

Sections:

- 5.30.010 Definitions.
- 5.30.020 Nuisances prohibited.
- 5.30.030 Inspection of properties.
- 5.30.040 Abatement of nuisances.
- 5.30.050 Recovery of the expense of abatement.
- 5.30.060 Protest of notice of abatement.
- 5.30.070 Unlawful acts.
- 5.30.080 Enforcement and remedies.

5.30.010 Definitions.

When used in this chapter, the following words shall be interpreted as follows, unless the context indicates otherwise:

- A. “Administrative officer” means the city manager, building official, fire marshal, member of the police department, neighborhood services officer, city health officer, or their designated representatives.
- B. “Agent” means any person acting on behalf of or in the place of the owner.
- C. “City” means the city of Gunnison, Colorado.
- D. “Inoperative vehicles” means vehicles as defined at Section 42-1-102(88), C.R.S., which by reason of mechanical failure or the absence of any component or part are incapable of being operated as originally intended for a period in excess of 30 days, and shall include all motor vehicles for which registration is required by the provisions of Section 42-3-102, C.R.S., which are not currently registered in accordance with Section 42-3-101, et seq., C.R.S.
- E. “Litter” means and includes any and every rubbish, waste material, refuse, garbage, trash, debris, excrement, urine, offal composed of animal matter or vegetable matter, or both, or any noxious or offensive matter whatever, including but not limited to any discarded dead animal, dead bird, dead fish, chemicals, chemical compound, petroleum product or compound, automobile part or accessory, tire, wheel, furniture, appliances, junk, paper, cardboard, lid, bottle, cap, carton, wrapper, box, wooden object, plastic object, clothing, cloth, metal object, rubber object, leather object, hide, feathers, grass clippings, leaves, cut weeds, branches cut from trees or bushes, brick, cinder block, building material, paint, concrete, sand, gravel, stone, glass, asphalt, ashes, cigarette, cigar, food or food product, solvent, dye, beverage, and liquid, except water.
- F. “Occupant” means and includes any person who occupies the whole or a part of a building, premises, or property, whether alone or with others.
- G. “Owner” means the owner of record, as reflected by the records of the office of the county clerk and recorder.
- H. “Public nuisance” means the use of any property which use would violate the following provisions:
 - 1. To use or to knowingly allow the use of property for the following described illegal activities (for purposes of this section, the illegal activity shall have the same definition as that contained in the section of the Colorado Revised Statutes (C.R.S.), as amended, listed after the illegal activity):

- a. Prostitution, Section 18-7-201, C.R.S.; soliciting for prostitution, Section 18-7-202, C.R.S.; pandering, Section 18-7-203, C.R.S.; keeping a place of prostitution, Section 18-7-204, C.R.S.; or pimping, Section 18-7-206, C.R.S.; or
 - b. Professional gambling, Section 18-10-102(8), C.R.S.; gambling on premises, Section 18-10-102(5), C.R.S.; or keeping of a gambling record, Section 18-10-102(7), C.R.S.; or
 - c. Unlawful manufacture, cultivation, growth, production, processing, sale, distribution, storage, or use, or possession for any unlawful manufacture, sale, distribution, or use, of any controlled substance, Section 12-22-303(7), C.R.S., except for possession of less than eight ounces of marijuana, or any imitation controlled substance; or
 - d. Felony or misdemeanor theft by receiving, Section 18-4-410, C.R.S.; or
 - e. Unlawful manufacture, sale, or distribution of drug paraphernalia, Section 18-18-426, C.R.S.; or
 - f. Prostitution of a child, Section 18-7-401, C.R.S.; soliciting for child prostitution, Section 18-7-402, C.R.S.; pandering of a child, Section 18-7-403, C.R.S.; keeping a place of child prostitution, Section 18-7-404, C.R.S.; pimping of a child, Section 18-7-405, C.R.S.; or inducement of child prostitution, Section 18-7-405.5, C.R.S.; or
 - g. Sexual exploitation of children, Section 18-6-403, C.R.S.; or
 - h. Violation of any provision of the Colorado Escort Service Code, Section 12-25.5-111, C.R.S.; or
 - i. Violation of any provision of the Colorado Massage Parlor Code, Section 12-48.5-110, C.R.S.; or
 - j. Where a person or persons repeatedly engage in disturbing the peace in violation of GMC 5.10.090;
2. To so negligently conduct any business or use any property so as to create such an offensive smell as may taint the air and render it unwholesome or disagreeable to others in the neighborhood;
 3. To throw or deposit, or cause to be thrown or deposited, any offal or any offensive matter, or the carcass of any animal, or any hazardous substance, as defined at Section 29-22-101, C.R.S., or other pollutant, in any watercourse, pond, spring, or well, or on land within the city which results in offensive or unwholesome conditions;
 4. To deposit any animal or human fecal material, dead animal, or other filthy, offensive, or noisome substance upon any property within the city;
 5. To suffer or permit any cellar, vault, private drain, pool, sewer, or sink upon any premises to become nauseous, foul, offensive, or injurious to the public health;
 6. To allow any open foundation or excavation within the city for which no valid building permit exists for the structure over the foundation or excavation;
 7. To permit or allow any partially completed building or structure to continue to exist when no current building permit exists for such building or structure or a previously issued building permit for such building or structure has expired. Notwithstanding the existence of a current build-

- ing permit for any partially completed building or structure, any such building or structure which remains incomplete for a period in excess of 18 months from the time construction thereof was started is hereby declared to be a public nuisance;
8. To allow the growth of weeds in excess of 10 inches in height upon any premises or part thereof, or upon the public right-of-way of any street or alley adjacent thereto;
 9. To throw or deposit or allow the accumulation of litter upon any property within the city, as defined herein, except that composting of yard wastes shall be permitted in compost-holding units which meet the following specifications:
 - a. Does not exceed 125 cubic feet in volume;
 - b. Shall be constructed of wood, wire, metal, or plastic, excluding plastic bags;
 - c. May be a stationary or a rotating unit;
 - d. Shall be located in the rear of the property and shall be screened or fenced so that it is not readily visible;
 - e. Shall be maintained to minimize odors;
 - f. Shall not be allowed to attract rodents or to become a health or safety hazard;
 10. To post, place, glue, staple, nail, affix, or attach any handbill, poster, placard, sign, announcement, or other painted or printed material upon or to any street, alley, sidewalk, lawful sign, telephone pole, power pole, light pole, or traffic signal pole located upon public property within the city;
 11. To deposit or store or allow to be stored any inoperative vehicles. This provision shall not apply to inoperative vehicles stored within a building or to storage of such vehicles on property which is zoned for such use by the provisions of GMC Title 15, nor shall this provision apply to vehicles defined as collector's items or parts car; provided, that such vehicles are stored in compliance with the provisions of Section 42-15-103, C.R.S.;
 12. To permit or allow any property to become or remain infested with any pest species as defined in this section;
 13. Anything declared to be a nuisance by any provision of this code, ordinance of the city, or statute of the state of Colorado.
- I. "Weeds" means common weeds, brush, grass, or other rank or noxious vegetation, but does not include flower gardens, vegetable gardens, plots of shrubbery, grain plots, and pastures used for feed, fodder, or forage, unless such garden, plot, or pasture contains "undesirable plants" as defined in Section 35-5.5-103, C.R.S. (Code 1997 § 5-3-1).

5.30.020 Nuisances prohibited.

It is unlawful for any person to create or maintain, or to knowingly allow or permit the creation or maintenance of, a nuisance within the city. (Code 1997 § 5-3-2).

5.30.030 Inspection of properties.

- A. Inspection Authorized. Any administrative officer shall have the power and authority to inspect and examine any public or private property in the city for the purpose of ascertaining the nature and existence of any nuisance.

- B. **Right of Entry – Generally.** Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever any administrative officer has reasonable cause to believe there exists in any building or upon any premises any condition which constitutes a nuisance hereunder, such administrative officer may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon him. Provided, however, that if such building or premises is occupied, such inspector shall first present proper credentials and request entry; if such building or premises is unoccupied, he shall first make a reasonable effort to locate the owner or occupant or other person or persons having charge or control of the building or premises, and upon locating the owner, occupant, or other person or persons, shall present proper credentials and request entry. If entry is refused, the administrative officer shall not enter upon such building or premises without issuance of a search warrant.
- C. **Search Warrants.** If entry upon any such building or premises is denied by the owner or occupant thereof, the administrative officer is authorized to apply to the municipal court of the city for issuance of a search warrant pursuant to the Colorado Municipal Court Rules of Procedure. Upon presentation of the search warrant and proper credentials, or possession of the same in the case of an unoccupied building or premises, the administrative officer may then enter into the building or upon the premises using such reasonable force as may be necessary to gain entry. (Code 1997 § 5-3-3).

5.30.040 Abatement of nuisances.

- A. **Notice to Abate.** An administrative officer of the city, upon the discovery of any nuisance on public or private property in the city, may notify the owner or occupant of the property in writing, requiring the owner or occupant of the property to remove and abate from the property the thing or things or condition described as a nuisance within the time specified in the notice; provided, however, that no notice to abate shall be required in the event the administrative officer discovers a nuisance that constitutes an imminent danger of damage to property or injury to any person or threat to the health of any person.
- B. **Time of Abatement.** The owner or occupant of the property shall be given a reasonable time within which the thing or things or condition described in the notice as a nuisance shall be removed or abated. Such time for abatement of the nuisance shall not exceed seven days unless it appears to the administrative officer from the facts and circumstances that compliance could not reasonably be made within seven days, in which case a longer period of time shall be given.
- C. **Contents of Notice.** The notice to abate issued pursuant to the provisions of this section to the owner or occupant of property upon which a nuisance was discovered shall contain the following:
1. The address or other description of the property upon which the nuisance was discovered;
 2. The name and address of the owner of the property upon which the nuisance was discovered;
 3. The name and address of the occupant of the property upon which the nuisance was discovered, if known, and if different from the owner;
 4. A description of the thing or things or condition deemed to be a nuisance;
 5. The time in which the thing or things or condition are to be removed or abated from the property;
 6. A statement advising the owner or occupant that he may protest the determination of the administrative officer with respect to any matters stated in the notice, by filing a written protest pursuant to GMC 5.30.060 with the municipal court within the time allowed for the removal or abatement of the nuisance described; and

7. A statement that if the owner or occupant fails to comply with directions contained in the written notice or file a written protest thereto in the time allowed, the city will enter the property, abate the nuisance described therein, and assess the costs thereof to the owner of the property.
- D. Service of the Notice. The written notice to abate shall be served by the administrative officer of the city by:
1. Personally delivering a copy of the notice to the owner of the property described in the notice if the owner also resides at the property; or
 2. Personally delivering a copy of the notice to a nonowner occupant or resident of the property described in the notice and mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the owner, as reflected in the county real estate records; or
 3. Mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the owner of the property described in the notice, as reflected in the county real estate records, if the property is unoccupied, and by posting a copy of the notice in a conspicuous place at the unoccupied property.

Service of the notice shall be complete upon the date of personal delivery or three days after the date of mailing as required herein.

- E. Abatement of Nuisance by City. If the owner or occupant of the property fails or refuses to comply with the directions of the written notice and does not file a written protest to such notice, as provided in GMC 5.30.060, then the administrative officer, using any necessary assistance, may enter upon such property for the purpose of removing the thing or things or abating the condition described in the notice as a nuisance.
- F. Emergency Abatement. Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this chapter, an administrative officer, upon presentation of proper credentials or identification, in the case of an occupied building or property, or possession of the credentials in the case of an unoccupied building or property, may enter into any building or upon any property within the jurisdiction of the city. For purposes of this subsection, an “emergency situation” includes any situation where there is imminent danger of loss of, or injury or damage to, life, limb, or property. The administrative officer may take such action as is necessary to remove the thing or things or abate the condition which creates such emergency. (Code 1997 § 5-3-4).

5.30.050 Recovery of the expense of abatement.

- A. In the event that the city abates the nuisance pursuant to GMC 5.30.040, the actual costs of the abatement, together with a fee in the amount of \$100.00 or 10 percent of the abatement costs, whichever is greater, shall be assessed upon the property from which such nuisance is abated.
- B. The costs assessed shall be paid to the city’s director of finance within 30 days after the director of finance has mailed notice of the assessment of such costs by certified mail, return receipt requested, to the owner of the property; provided, however, that if the property is occupied by someone other than the owner, notice of the assessment shall be mailed to both the owner and the occupant. The assessment of costs shall be a lien in the amount assessed against such property until paid, and shall have priority over all other liens, except general taxes and prior special assessments.
- C. If any assessment is not paid within 30 days after the date it is mailed, the director of finance is hereby authorized to certify to the county treasurer a list of all delinquent assessments, giving the name of the owner as it appears in the real estate records of the county, the description of the property sufficient to identify the property upon the records of the county treasurer, and the amount of the assess-

ment. The county treasurer, upon receipt of such list, certified in such form as the treasurer may require, is hereby authorized to place those assessments upon the tax rolls for the current year and to collect those assessments in the same manner as other taxes are collected. (Code 1997 § 5-3-5).

5.30.060 Protest of notice of abatement.

- A. The owner, his agent, or the occupant of the property subject to a notice of abatement, within the time stated in such notice for removal of the thing or things or abatement of the condition described therein, may protest the findings of the administrative officer with respect to any matter stated in the notice, by filing a written notice of protest with the municipal court. The municipal court shall deliver a copy of the protest to the administrative officer who issued the notice. Upon receipt of a notice of protest, the administrative officer shall file with the municipal court of the city the notice to abate and the written notice of protest.
- B. Within 21 days after receipt of the protest by the city, the municipal court shall schedule and conduct a hearing on the protest. At the hearing, the protesting party and representatives of the city shall appear in person. Both parties may be represented by legal counsel. The parties shall have the right to present evidence and arguments to confront and cross-examine any witness and to oppose any testimony or statement relied upon by an adverse party. The municipal court may receive and consider any evidence which has probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.
- C. Once the municipal court has scheduled a hearing on the protest, written notice of such hearing shall be mailed to the protesting party and given to the administrative officer who signed the notice of abatement. Such notice of hearing shall be mailed to the protesting party and given to the administrative officer not less than seven days prior to the scheduled hearing.
- D. Upon the filing of a written protest as provided herein, the period of time for removal of the thing or things or abatement of the condition described in the original notice of abatement shall be extended until final disposition of the protest by the municipal court, plus the amount of time granted in the original notice, or as otherwise ordered by the municipal court. (Code 1997 § 5-3-6).

5.30.070 Unlawful acts.

- A. It shall be unlawful for any person:
 1. To create, operate, maintain, or conduct any nuisance as described in this chapter.
 2. To interfere with or prevent, or attempt to interfere with or prevent, the abatement of any nuisance by an officer or representative of the city pursuant to the provisions of this chapter.
- B. Any person, organization, or entity who makes or causes any nuisance to exist shall be deemed the author of the nuisance. Moreover, any person who has possession or control of any private property or premises, whether he is the owner of the property or not, where any nuisance exists or is found, shall be deemed the author of the nuisance. Moreover, any person who is the owner of the private property or premises, or an agent for the owner of the private property or premises, who, having received prior notice of the existence of such nuisance, shall fail to remove the thing or things or abate the condition described in such notice, shall be deemed the author of the nuisance. Each and every day during which a nuisance continues shall be deemed a separate offense and shall be prosecutable and punishable as a separate offense. (Code 1997 § 5-3-7).

5.30.080 Enforcement and remedies.

In addition to any other remedies that may be available to the city, including the right to maintain an action in any court of record for the prevention, restraining, abatement, or enjoining of any public nuisance, and in addition to any other procedural remedy which may be permitted by this code, the city may enforce the terms of this chapter by either of the following procedures:

- A. Civil Actions. When an alleged violation of this chapter has not been abated within the time specified in any notice to abate issued pursuant to GMC 5.30.040, the city may bring an action in the municipal court in accordance with this section to have the nuisance declared as such by the court and for an order enjoining the nuisance, or authorizing its restraint, removal, termination, or abatement by the owner, agent, occupant, or the person who caused the nuisance, or the person who allowed it to continue, or by the city, through its designated representatives.
1. The action to declare and abate a public nuisance shall be brought in the name of the city by filing a complaint, which shall be verified or supported by an affidavit. Summonses and subpoenas shall be served as in civil cases, and any employee of the city who is over the age of 18 may serve the summons and verified complaint upon the owner, agent, occupant, or person who caused the nuisance or allowed it to continue (hereinafter “respondent”) or a subpoena upon any witness whose testimony is deemed necessary for the trial. Trial shall be to the court.
 2. A notice of appearance shall be served with the summons and complaint. The appearance date shall be not less than 21 days from the date of service of the summons and complaint. The respondent shall file a response or answer on or before the appearance date specified in the notice of appearance. Trial shall be held on the appearance date specified in the notice of appearance, unless the court grants a continuance for good cause shown. No case shall be continued for more than 21 days after the appearance date.
 3. Upon the date and time specified for appearance and trial, if the respondent has filed no response and fails to appear, and if the city proves that proper service was made upon the respondent at least 21 days prior to the appearance date, the court may grant such orders as are requested by the city, except that the court shall order that enforcement by the city be stayed for 10 days and that a copy of the court’s order be mailed to the respondent at his last known address. Failure to appear on any date set for trial shall be grounds for entering a default and default judgement thereon against a nonappearing party. Prior to enforcement and for good cause shown, the court may set aside any entry of default and the default judgment entered thereon.
 4. Any disobedience to or interference with any injunction or order issued by the municipal court in an action to abate a public nuisance may be punished as a contempt of court or by a fine not to exceed \$1,000. Each day’s failure to comply with an injunction or order to abate shall constitute a separate act of contempt for which an additional penalty may be imposed.
 5. In order to facilitate just, speedy, informal, and inexpensive determinations of claims, the court shall follow the Rules of County Court Civil Procedure, as presently adopted and as amended hereafter from time to time, excepting Rules 302, 313, 338, 339, 347, 348, 350, 351, 351.1, 359(c)(2), 365, 383, 398, 402, 403, 404, and 406 thereof. In the event of any discrepancy between any of the provisions of this chapter and those applicable Rules of County Court Civil Procedure adopted hereby, the provisions of this chapter shall prevail and be applied. The right is expressly reserved and delegated to the municipal court to adopt rules of procedure for the municipal court, which rules shall be applicable in any civil enforcement action brought by the city; provided, however, that said rules of procedure adopted and promulgated by the judge of the municipal court shall not conflict with or contradict the authority of the city to pursue civil enforcement for violations of the provisions of this chapter.
- B. Criminal Actions. When an alleged violation of this chapter has not been abated within the time specified in any notice issued pursuant to GMC 5.30.040, the city may bring a criminal action in the municipal court to have the nuisance declared as such by the court and have the court impose sentence pursuant to the terms hereof upon the person charged with such violation. Any person violating any of the provisions of this chapter, upon conviction of such violation, shall be subject to a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both such fine and imprisonment.

- C. Other Remedies. The remedies set forth herein are cumulative. The initiation of any action with the imposition of any penalty hereunder shall not preclude the city or any proper city official from instituting any other proceeding to require compliance with the provisions of this chapter. No provision herein shall be construed to limit or abrogate the right of any person to bring a private action to abate a private nuisance. (Ord. 19-1997 §§ 4, 5; Code 1997 § 5-3-8).

Chapter 5.40**ANIMALS**

Sections:

- 5.40.010 Definitions.
- 5.40.020 Licensing.
- 5.40.030 Disease control.
- 5.40.040 Animal treatment.
- 5.40.050 Animal control and restraint.
- 5.40.060 Animal nuisance abatement.
- 5.40.070 Animal shelter.
- 5.40.080 Enforcement and penalties.

5.40.010 Definitions.

As used in this chapter, the following terms are defined as provided:

- A. "Animal" means every nonhuman species of the animal kingdom, both domestic and wild.
- B. "Animal-at-large" means any animal off the premises of the owner and not under the direct control of a person capable of controlling the animal.
- C. "Animal control officer" means any person designated by the municipal government as a law enforcement officer for the purpose of enforcing the provisions of this chapter.
- D. "Animal shelter" means any facility operated by a humane society, or municipal agency or its authorized agents, for the purpose of impounding animals under the authority of this chapter or state law for care, confinement, return to owner, adoption, or euthanasia.
- E. "Bite" means to be seized by an animal with the teeth or jaws so that a person or animal has been nipped, gripped, wounded, or pierced.
- F. Breeder.
 - 1. "Professional" means any person who breeds animals for profit or who produces more than two litters of animals in any one calendar year.
 - 2. "Hobbyist" means any person who breeds animals as a hobby, producing not more than two litters in any one calendar year.
- G. "Cat" means any member of the animal species *Felis catus*.
- H. "Commercial animal establishment" means any pet shop, grooming shop, guard dog training facility, animal auction, riding school or stable, zoological park, circus, performing animal exhibition, boarding or breeding kennel, or other establishment which handles live animals for profit except commercial ranching operations.
- I. "Control" means an animal must be on a leash not more than eight feet in length controlled by a person physically competent to control the animal; or within the property limits of its owner or harborer or upon the premises of another person with the consent of that person.
- J. "Dog" means any member of the animal species *Canis familiaris*.

- K. "Domestic animal" includes: dogs, cats, domesticated sheep, horses, cattle, goats, swine, fowl, ducks, geese, turkeys; confined domestic hares and rabbits, pheasants, and other birds; and animals raised and/or maintained in confinement, including small, harmless pet animals, such as species of aquarium fish, cage birds, and certain rodents, such as mice, hamsters, and guinea pigs.
- L. "Dwelling unit" means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation for not more than one family.
- M. "Euthanasia" means a death brought about by any method which produces rapid loss of consciousness resulting in a painless death.
- N. "Kennel or cattery" means any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs or cats.
- O. "Licensing authority" means the municipal governing body or anybody designated by the municipal governing body to have authority to promulgate rules pursuant to this chapter and to enforce the provisions of this chapter.
- P. "Owner" means any person, partnership, or corporation owning, keeping, harboring, possessing, or having custody or control of one or more animals. "Harboring" an animal includes providing food or shelter for three consecutive days or more.
- Q. "Person" means any individual, firm, corporation, partnership, association, trust, estate, or other legal entity.
- R. "Pest species" means all animals commonly known as starlings, rock pigeons, skunks, prairie dogs, black and Norway rats, common house mice, and all insects or spiders generally considered pests.
- S. "Pet" means any animal kept for pleasure rather than utility, especially any animal of a species that has been bred and raised to live in or about the habitation of humans and is dependant on people for food and shelter.
- T. "Pet shop" means any person, partnership, or corporation, whether operated separately or in connection with another business enterprise that buys, sells, or boards any species of animal.
- U. "Vaccination" means an injection of anti-rabies vaccine made subcutaneously or otherwise, as approved by the State Health Department.
- V. "Vicious animal" means any animal that, without provocation, bites or attacks humans or other animals; approaches any person or other animal in a vicious or terrorizing manner or in apparent attitude of attack, whether or not the attack is consummated or is capable of being consummated; or has acted in a manner that causes or should cause its owner to know that it is potentially vicious.
- W. "Wild animal" means any animal, including those born or raised in captivity, except for human beings and domestic animals. (Code 1997 § 5-4-1).

5.40.020 Licensing.

A. Licensing.

1. License Requirement. Any person owning, keeping, harboring, or having custody of any dog or cat over six months of age within this municipality must obtain a license as herein provided.

2. Application. Written application for licenses, which shall include name and address of applicant, description of the animal, the appropriate fee, and rabies certificate issued by a licensed veterinarian or anti-rabies clinic, shall be made to the licensing authority.
3. License Period. If not revoked, licenses for the keeping of dogs and cats shall be valid for a period of one year. Such a license may be renewed annually. The annual licensing period shall begin on June 1st.
4. Circumstances Requiring Application. Applications for licenses must be made within 30 days after obtaining a dog or cat six months of age or older, or when a cat or dog in one’s possession becomes six months of age. This requirement does not apply to a nonresident keeping a dog or cat within the municipality for 90 days or less.
5. Exceptions. License fees shall not be required for certified governmental police dogs, seeing-eye dogs, hearing dogs, or other certified dogs that are trained to assist the physically handicapped.
6. Additional Regulations. The licensing authority may promulgate other regulations governing the issuance of licenses. Such regulations may include requirements for human care of animals and other requirements consistent with this chapter and other applicable law. The licensing authority may amend such regulations from time to time as is deemed desirable for the preservation of the public health and welfare and to prevent animal cruelty.
7. Tags. Upon acceptance of the license application, fee, and agreement to follow all applicable regulations, the licensing authority shall issue a durable tag, stamped with an identifying number and the year of issuance. Tags should be designed so that they may be conveniently fastened or riveted to the animal’s collar or harness. Dogs and cats must wear the identification tags issued for them, and not that of any other, at all times when off their owners’ premises. The licensing authority shall maintain a record of the identifying numbers of all tags issued and shall make this record available to the public at all times.
8. Fee Schedule. A license shall be issued after payment of one of the following application fees:

unneutered male dog	\$10.00	neutered male dog	\$5.00
unneutered male cat	\$10.00	neutered male cat	\$5.00
unspayed female dog	\$10.00	spayed female dog	\$5.00
unspayed female cat	\$10.00	spayed female cat	\$5.00
9. Duplicate Licenses. A duplicate license may be obtained upon payment of a \$2.00 replacement fee.
10. License Limitation. No person may use any license for any animal other than the animal for which it was issued.

B. Permits – Commercial and Breeder.

1. Permit Requirement. No person, partnership, or corporation shall operate a commercial animal establishment or animal shelter without first obtaining a permit in compliance with this subsection.
2. Fee Exceptions. No fee shall be required of any veterinary hospital, animal shelter, or government-operated zoological park in order to obtain a permit.

3. Applications. The application for a permit shall be on forms provided by the municipality. The licensing authority may promulgate regulations for the issuance of permits and shall include requirements for humane care of all animals and for compliance with the provisions of this chapter and other applicable laws. The licensing authority may amend such regulations from time to time as deemed desirable for the public health and welfare and for the protection of animals.
4. Permit Issuance. If a permit applicant has complied with all applicable regulations, a permit shall be issued upon payment of the applicable fee.
5. Permit Fees. Permits shall be issued upon payment of the applicable fee and compliance with all other requirements:
 - a. Breeder, hobbyist: \$25.00;
 - b. Breeder, professional: \$100.00;
 - c. Grooming shop: \$10.00;
 - d. Kennel, authorized to house fewer than 10 dogs or cats: \$50.00;
 - e. Kennel, authorized to house 10, but less than 50 dogs or cats: \$100.00;
 - f. Kennel, authorized to house over 50 dogs or cats: \$500.00;
 - g. Pet shop: \$10.00.
6. Permit Transfer Fee. If there is a change of ownership or classification, the new owner may have the current permit transferred to his or her name upon payment of a \$10.00 transfer fee and compliance of all rules and regulations.
7. Noncompliance – Penalty. Failure to obtain a permit before opening any facility covered in this subsection shall result in a fine of \$200.00.

C. License and Permit Issuance and Revocation.

1. Generally. After a permit application is filed, the licensing authority shall inspect the facility prior to issuing the permit. The licensing authority may revoke any permit or license if the person holding the permit or license refuses or fails to comply with or has been convicted of a violation of this chapter, regulations promulgated by the licensing authority, or any law governing the protection and keeping of animals.
2. Inspection. It shall be a condition of the issuance of any permit or license that the licensing authority shall be permitted to inspect all animals and the premises where animals are kept at any time and shall, if permission for such inspection is refused, revoke the permit or license of the refusing owner.
3. Automatic Review. The licensing authority shall automatically review all licenses and permits issued to animal owners against whom three or more violations of this chapter have been assessed in a 12-month period.
4. False Application. If the applicant has withheld or falsified any information on the application, the licensing authority shall refuse to issue a permit or license.

5. Disposal of Animal upon Revocation. Any person whose permit or license is revoked shall, within 10 days thereafter, humanely dispose of all animals owned, kept, or harbored. No part of the permit or license fee shall be refunded.
6. Conviction Effect. No person who has been convicted or pled guilty to a violation of cruelty to animals shall be issued a permit or license to operate a commercial animal establishment, serve as a breeder, or train guard dogs.
7. Reapplication. Any person having been denied a license or permit may not reapply for a period of 30 days. Each reapplication shall be accompanied by a \$10.00 fee. (Code 1997 § 5-4-2).

5.40.030 Disease control.

- A. Diseased Animals. No domestic animal afflicted with a contagious or infectious disease shall be allowed to run at large or to be exposed in any public place whereby the health of man or animal may be affected.
- B. Vaccinations – Dogs and Cats. It shall be the duty of every owner of a dog or cat over six months of age harbored in the municipality to have such a dog or cat vaccinated by a licensed veterinarian or animal health clinic. The owner of such dog or cat shall present a copy of the vaccination certificate with the dog or cat license application required by GMC 5.40.020(A) verifying a current vaccination administered as authorized by the Department of Health.
- C. Vaccination Exemption. If a veterinarian licensed by the state issues a certificate that inoculation would be harmful to a specific dog or cat, and that failure to inoculate such animal shall not create a danger for humans or other animals, that dog or cat shall be exempt from the inoculation prescribed by this chapter.
- D. Report of Animal Bites.
 1. Any owner whose animal bites a person shall immediately notify the animal control officer or police department of the municipality.
 2. It shall be the duty of every physician and medical practitioner practicing in the municipality to report to the animal control officer or the police department the name and address of any person treated for bites or wounds inflicted by an animal, together with all available information necessary for rabies control.
 3. It shall be the duty of every veterinarian practicing in the municipality to report to the animal control officer or the police department the name and address of the owner of any animal treated for bites or wounds inflicted by any other animal, together with all available information necessary for rabies control.
- E. Quarantine of Animals Suspected of Having Rabies. Animals suspected of having rabies or having bitten any person or animal and having an uncertain vaccination status shall be impounded in solitary confinement and kept under observation for a period of 10 days. An attempt shall be made by the animal control officer to discover whether the animal has been vaccinated against rabies. If it is found that the animal has not been effectively vaccinated or there is any doubt whether the animal has in fact been vaccinated, then it shall be vaccinated on the last day of the observation period. The municipality may cause any animal which has rabies to be destroyed humanely and an autopsy performed. All expenses in connection with the provisions of this subsection shall be borne by the owner of the animal.

- F. Killing of Certain Animals Which Cannot Be Safely Captured or Impounded. If any vicious or dangerous animal suspected of or having rabies, found at large, cannot be safely taken up and impounded, the animal may be slain by any animal control or police officer. (Code 1997 § 5-4-3).

5.40.040 Animal treatment.

A. Cruelty to Animals.

1. Infliction of Pain or Death. No person shall knowingly, intentionally, or maliciously kill or injure or inflict pain or suffering on any animal. No person shall permit, by neglect or inaction, the death or injury or infliction of pain or suffering on any animal. No person shall beat, cruelly treat, torment, overload, overwork, or otherwise abuse or kill an animal or cause, instigate, or permit any fight between animals or between animals and humans, or attend such fights.
2. Proper Food and Shelter. No owner or person with custody of an animal for more than 12 consecutive hours shall fail to provide the animal with sufficient wholesome and nutritious food, water in sufficient quantities, proper air, shade or shelter space, protection from the weather, veterinary care as needed to maintain health and prevent suffering, and other humane care and treatment.
 - a. "Shade" shall mean protection from the direct rays of the sun during the months of June through September.
 - b. "Shelter" shall mean a moisture-proof structure of suitable size to accommodate the animal and allow retention of body heat, made of durable material with a solid floor raised at least two inches from the ground. Such structure shall be provided with a sufficient quantity of suitable bedding to provide insulation and protection against cold and dampness.
 - c. All pens, yards, or runs, or other structures wherein any animal is kept shall be of such construction so as to be easily cleaned and shall be maintained in good repair. Fences which are intended as enclosures for any animal shall be securely constructed, adequate for the purpose, and kept in good repair, in compliance with all ordinances of the municipality.
 - d. Agricultural operations involving large animals are exempt from shade and shelter requirements.
3. Abandonment. No person shall abandon any animal which they own or is in their custody. In this context, "abandon" means to leave the animal unattended for more than 48 consecutive hours, or without food, water, or shelter for more than 12 hours.
4. Poisoning. No person shall expose any known poisonous substance, whether mixed with food or not, so that a reasonable person would know or should know that such substance would probably cause animals to be attracted thereto, eat thereof, and be poisoned thereby; provided, however, this subsection does not make unlawful the poisoning of rats or mice with commercial rat poison mixed with vegetable substances.
5. Sale of Chickens, Ducks, and Rabbits. Chickens, ducks, or rabbits younger than eight weeks of age may not be sold in quantities of fewer than 25 to a single purchaser.
6. Animals as Prizes. No person shall give away any live animal, fish, reptile, or bird as a prize for, or as an inducement to enter, any contest, game, or other competition, or as an inducement to enter any place of amusement, or as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.

7. **Confinement in Vehicles.** No person shall confine an animal within a parked, closed vehicle, without allowing cross-ventilation. Under no circumstances shall a person confine any animal in any parked, closed vehicle on any public street or way for more than 30 minutes, or where the temperature in the vehicle exceeds 90 degrees Fahrenheit. Any animal control or police officer observing an animal kept in violation of this section may enter the vehicle and impound the animal. In addition to all other defenses and immunities provided by law, any such officer making entry for the purpose of this section is immune from suit or liability, criminal or civil, for, caused by, or arising out of such entry.
8. **Protective Custody.**
 - a. Any animal found receiving inhumane treatment, as described in this section, may be removed and impounded at the expense of the owner.
 - b. Any animal whose life reasonably appears to be endangered may be so removed and impounded, whether or not in the presence of its owner.
9. **Exceptions to This Subsection.** Nothing in subsection (A) of this section shall be deemed to prohibit any action by a licensed veterinarian done in accordance with accepted standards of veterinary medicine. Nothing in subsection (A) of this section shall be interpreted as prohibiting any act done in self-defense or to defend another person.

B. Commercial Animal Establishments – Other Domestic Animal Regulations.

1. **Generally.** All commercial animal establishments shall meet the following conditions:
 - a. Animal housing facilities shall be provided for the animals and shall be structurally sound, constructed of nontoxic materials, maintained in good repair, and designed so as to protect the animals from injury and restrict the entrance of other animals. Each animal shall be provided with adequate floor space to allow it, according to species and breed, to breathe and turn about freely and to easily eat, eliminate wastes, stand, sit, and lie in a comfortable, normal position and sanitary environment.
 - b. Water shall be supplied at sufficient pressure and quantity to clean housing facilities and enclosures of debris and excreta.
 - c. Adequate food and bedding shall be provided and stored in facilities which provide protection against infestation or contamination by insects or rodents. Refrigeration shall be provided for the protection of perishable foods.
 - d. Provision shall be made for the removal and disposal of animal and food wastes, bedding, dead animals, and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, and disease.
 - e. Each animal shall be observed daily. Sick, diseased, or injured animals shall be separated from those appearing healthy and normal. Sick, diseased, or injured animals shall be removed from display and sale and kept in isolation quarters. Ventilation of quarters for sick or diseased animals shall be arranged to avoid contamination of healthy animals.
 - f. An employee, keeper, or owner shall make provision to feed, water, and provide other necessary care for animals on days the store or establishment is closed.

- g. No person shall knowingly misrepresent an animal to a consumer in any way. No person shall knowingly sell a sick or injured animal. Adequate care and feeding instructions shall be given, in writing, to each animal purchaser.
 - h. Animals which are caged, closely confined, or restrained shall be permitted to exercise daily, for an appropriate length of time as determined by their size, age, and species, in an area suitable for that purpose.
 - i. Facilities shall be clean and sanitary at all times.
2. Domestic Animals.
- a. It shall be unlawful to maintain any dog house or poultry or animal yard within 25 feet of any building used for residential purposes by anyone other than the one maintaining such dog house, poultry, or animal yard, or his or her immediate family, or within 25 feet of any public way other than an alley, or within 100 feet of any church or school building.
 - b. For the purpose of this chapter, the term “poultry or animal yard” shall include every enclosure, shed, or structure used to house one or more live fowl (included in the term “fowl” are chickens, ducks, geese, and other poultry) or one or more cattle, horses, sheep, goats, or other domestic animals.
 - c. Every person maintaining a poultry or animal yard shall keep the same clean and sanitary and free from all refuse.
3. Performing Animal Exhibits.
- a. No person is permitted to exhibit any animal performance in which animals are induced or encouraged to perform through the use of chemical, mechanical, electrical, or manual devices in a manner which will cause or probably cause physical injury, pain, suffering, or irritation to any such animal.
 - b. All equipment used on any performing animal shall fit properly and be in good working condition.
- C. Animals Injured by Motor Vehicles. Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and shall immediately report the accident to the appropriate law enforcement agency.
- D. Wild Animals.
1. Prohibition on Keeping – Generally.
- a. No person shall keep or permit to be kept any wild animal or vicious animal for display or exhibition purposes, whether done gratuitously or for a fee; provided, however, this subsection does not apply to zoological parks, performing animal exhibitions, or circuses elsewhere regulated by the provisions of this chapter and by state law.
 - b. The animal control officer has the authority to order any person or owner to release appropriately any wild animal kept or permitted to be kept in violation of this chapter or to order the appropriate release of any infant wild animal under temporary care and deemed by such officer as capable of survival in the wild. Any person or owner refusing or neglecting to obey such order immediately is in violation of this chapter.

2. Wildlife Sanctuary.
 - a. The entire area within the corporate limits of the municipality is a wildlife sanctuary for the refuge of all wildlife, and all persons within the municipality are urged to protect said wildlife and encourage its propagation. "Wildlife," as used in this subsection, includes all native or naturalized wild animals except pest species.
 - b. No person shall at any time within the corporate limits of this municipality frighten, shoot at, wound, kill, capture, ensnare, trap, net, poison, or in any other manner kill, injure, or molest any wildlife or injure the nest, den, eggs, or young of such animals. All municipal, state, and federal authorities possessing wildlife control jurisdiction authorized to kill or capture any wild animal are exempted from this provision. (Code 1997 § 5-4-4).

5.40.050 Animal control and restraint.

A. Running at Large.

1. Generally. No person shall suffer or permit any domestic or wild animal of which he or she is the owner, caretaker, or custodian to run at large within the municipality. Any such animal shall be deemed to be running at large when it shall be off the premises owned or rented by its owner and not under the control of the owner or an agent or employee of the owner. Any such animal may be impounded by the municipality.
2. Public Places. No domestic animal shall be permitted in any public place, unless under the control of its owner. "Public places" include, but are not limited to, public property, common areas of private property, parking lots, churches, cemeteries, parks, schools, and swimming areas.
3. Escaped Animals. Within one hour after the discovery that an animal has escaped from either the owner or the person having custody of the animal, the owner or custodian of the animal shall report the escape of said animal to the police department or the animal control officer.

B. Dangerous Animals.

1. Vicious Animals.
 - a. It shall be unlawful for any person to keep or harbor any vicious animal within the municipality. It shall be an affirmative defense to charges under subsection (B) of this section that the actual or intended victim of any attack has made an unlawful entry into the dwelling of the animal's owner or is threatening or attacking an owner of the animal.
 - b. The animal control officer, neighborhood services officer, or any police officer may impound any animal which is reasonably believed to be vicious. At the request of the owner of the impounded animal, within five days of the date the animal is impounded either the animal shall be released to the owner thereof or the owner shall be charged with a violation of this subsection, in which case the impoundment of the animal shall continue until further order of the municipal court.
2. Wild and Dangerous Animals.
 - a. Unlawful to Own or Possess. It shall be unlawful for any person to own, possess, harbor, sell, or in any other manner traffic in any wild and vicious animals, including, but not limited to, the following:
 - i. All poisonous snakes and other poisonous reptiles; and all nonpoisonous snakes with a length greater than six feet;

- ii. All species of primates;
 - iii. All species of canine, feline, bear, and other carnivorous animals other than dogs and cats, as defined within this chapter.
 - b. Exceptions. The provisions of subsection (B) of this section shall not be applicable to any bona fide zoological park, wildlife sanctuary, or any circus licensed by the city.
 - c. At Large. The animal control officer shall have the authority to apprehend any wild animal that may be at large. Such wild animal may be impounded, released in wild areas outside the municipality which are representative of the animal's natural habitat, or humanely destroyed as the animal control officer in his sole discretion shall determine in accordance with state law. The animal control officer is authorized to use any tranquilizer gun or other firearm to subdue or destroy any wild or dangerous animal.
 3. Costs to Be Paid by Responsible Persons. Any reasonable costs incurred by the municipality in seizing, impounding, and confining any dangerous, wild, or vicious animal shall be charged against the owner of such animal. Such charge shall be in addition to any other fine or penalty provided for violating this chapter.
 4. Destruction of Animal Too Dangerous to Capture. Any dangerous animal subject to impoundment under the provisions of subsection (B) of this section, or any other animal which because of its disposition or diseased condition is subject to impoundment and is deemed too dangerous to apprehend, may be destroyed by a police or animal control officer.
- C. Public Parks. No person shall appear with an animal in those portions of the public parks of the city of Gunnison which are enclosed by fencing and are posted with signs prohibiting dogs or other animals from being brought upon the premises. This subsection shall not apply to a disabled person with a guide dog. (Code 1997 § 5-4-5).

5.40.060 Animal nuisance abatement.

A. Restrictions.

1. Generally. No animal owner shall fail to exercise proper care and control of his or her animals to prevent them from becoming a public nuisance. A "public nuisance" includes any of the occurrences listed in subsection (A) of this section as well as any other occurrence determined by the governing body or a court of competent jurisdiction or law.
2. Noise. No animal owner shall permit any animal to cause annoyance, alarm, or noise disturbance for more than 10 minutes at any time of the day or night, by repeated barking, whining, screeching, howling, braying, or other like sounds which can be heard beyond the boundary of the owner's property.
3. Property Damage. It shall be unlawful for an owner to allow an animal to injure or destroy any real or personal property of any description belonging to another. A judge may, in addition to any other penalty, order the defendant to make restitution to the party injured.
4. Excessive Number of Animals. It shall be unlawful for any person or persons in any dwelling unit to keep more than two dogs or two cats or a total of three dogs and cats within the municipality, with the exception that a litter of cats or dogs, or a portion of any such litter, may be kept for a period of time not exceeding three months from birth. The provisions of this subsection shall not apply to any commercial animal establishment or licensed breeder.

5. Excrement. No person shall appear with an animal upon the public ways, within public places, or upon the property of another, absent that person's consent, without some means for the removal of excrement; nor shall any person fail to remove any excrement deposited by such animal. This subsection shall not apply to a blind person while walking a guide dog.
6. Females in Heat. All female animals in heat shall be confined in a building or secure enclosure or upon a leash in such manner that the animal cannot come into contact with a male animal except for planned breeding.

B. Procedures.

1. Hearing and Impoundment. Any person owning or having in his or her possession or under his or her control any animal constituting a nuisance in violation of this section may be summoned before a court of competent jurisdiction to show cause why such animal should not be confined, disposed of, or removed, or the nuisance otherwise abated. Upon hearing and a finding that the animal constitutes a public nuisance in violation of this section, the court shall order the animal in question either to be confined, to be disposed of, or to be removed, or such other relief as the court deems appropriate.
2. Cost of Impoundment. Any person who owns any animal that has been adjudged a nuisance pursuant to this section shall be responsible for the costs of disposal, removal, or impoundment. (Code 1997 § 5-4-6).

5.40.070 Animal shelter.

A. Animal Shelter.

1. Establishment and Functioning. The municipal governing body shall appoint the chief animal control officer as director for any animal shelter established by the municipality. The director of the shelter shall appoint assistants as necessary. It shall be the duty of the director or his or her assistants to do the following acts:
 - a. Establish and maintain, or supervise under contract, an animal shelter at some convenient location either within or outside the municipality, which shall be kept sanitary, properly heated, ventilated, and lighted;
 - b. Properly house, feed, water, and care for all animals confined in the animal shelter;
 - c. Capture and secure all animals running at large contrary to the provisions of this chapter and remove such animals in a humane manner to the animal shelter.

B. Operations.

1. All animals authorized under this chapter to be impounded shall be captured by either a police or an animal control officer and impounded in the municipal animal shelter and there confined in a humane manner. In addition, the shelter is authorized to accept unwanted or disclaimed animals.
2. Impounded animals shall be kept for not fewer than three working days.
3. If, by a license tag or other means, the owner of an impounded animal can be identified, the shelter director, his or her assistants, or an animal control officer shall immediately upon impoundment notify the owner by telephone or mail.

4. An owner reclaiming an impounded animal shall pay a fee of \$10.00 and an additional \$3.00 for each day the animal has been impounded. Second impounds occurring within 12 months shall be charged an impoundment fee of \$20.00 and an additional fee of \$6.00 for each day of impoundment. Third and subsequent impounds occurring within 12 months shall be charged an impoundment fee of \$30.00 and an additional fee of \$9.00 for each day of impoundment.
 5. Any animal not reclaimed by its owner within three working days after notification is made or sent as provided in subsection (B)(3) of this section shall become the property of the municipality and shall be made eligible for adoption in a suitable home or subject to humane euthanasia.
 6. The shelter director shall keep complete and accurate records of the care, feeding, veterinary treatment, and disposition of all animals impounded at the shelter. The director shall make an annual report to the governing body of the municipality.
 7. It shall be unlawful for any person to remove an animal from the municipal animal shelter without first reclaiming the animal pursuant to the provisions of this section, or to interfere with an animal control officer, neighborhood services officer, or a police officer while they are attempting to impound an animal.
- C. Adoption. No unclaimed animal shall be released for adoption without written agreement from the adopter guaranteeing that such animal will be sterilized on or before a specified date. The adoption agreement will be accompanied by a \$10.00 fee plus the appropriate license fee. The adopter will be given information about financial assistance for sterilization of the animal.
- D. Relinquishment. Unwanted pets may be accepted upon payment of a \$25.00 relinquishment fee and completion of a waiver form. (Code 1997 § 5-4-7).

5.40.080 Enforcement and penalties.

- A. Enforcement – General Procedures. Whenever there is any violation of any provisions of this chapter, the animal control officer, any police officer, or authorized licensing authority agent finding such violation may, except as otherwise provided herein, issue a summons and complaint or citation to the owner of or person responsible for the animal to appear in municipal court. Any hearing on the summons and complaint or citation shall be held no sooner than five days after the notice.
- B. Penalties.
1. Nuisance and Animal at Large Violations. Any person found guilty of permitting an animal to be at large, as defined in GMC 5.40.050(A), or a nuisance as defined in GMC 5.40.060 shall be fined:
 - a. Upon presentation to the court of sufficient evidence the animal has been sterilized:
 - i. Not less than \$15.00 nor more than \$1,000 for the first offense;
 - ii. Not less than \$25.00 nor more than \$1,000 for the second offense within a 12-consecutive-month period;
 - iii. Not less than \$50.00 nor more than \$1,000 for all offenses subsequent to the second within a 12-consecutive-month period; in addition to or in lieu of the foregoing, the defendant may be ordered to remove such animal permanently from the municipality within 24 hours. Refusal or failure to comply may result in impoundment and disposal of the animal. In addition to or in lieu of any of the foregoing, the defendant may be sentenced to up to 90 days in jail; or

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- b. When no sufficient evidence is presented to the court that the animal has been sterilized:
 - i. Not less than \$30.00 nor more than \$1,000 for the first offense;
 - ii. Not less than \$50.00 nor more than \$1,000 for the second offense within a 12-consecutive-month period;
 - iii. Not less than \$100.00 nor more than \$1,000 for the third offense within a 12-consecutive-month period; in addition to or in lieu of either of the foregoing, the defendant may be ordered to remove such animal permanently from the municipality within 24 hours. Refusal or failure to comply may result in the impoundment and disposal of the animal. In addition to or in lieu of any of the foregoing, the defendant may be sentenced to up to 90 days in jail.
 2. Vicious Animal Violations. Any person found guilty of keeping or maintaining a vicious animal as defined by GMC 5.40.050(B)(1) may be:
 - a. Fined not less than \$25.00 nor more than \$1,000; and
 - b. Ordered to have such animal destroyed within 24 hours, or within 24 hours after the end of any required rabies observation period.
 - c. In addition to or in lieu of the foregoing, the defendant may be sentenced to up to 90 days in jail. (Ord. 19-1997 § 6; Code 1997 § 5-4-8).

