ORDINANCE NO. 9
SERIES 2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, AMENDING TITLE 5. GENERAL OFFENSES, CHAPTER 5.30, NUISANCES, OF THE GUNNISON MUNICIPAL CODE.

WHEREAS, City staff has recommended amendments to Chapter 5.30, Nuisances, of the Gunnison Municipal Code (G.M.C.); and

WHEREAS, the current ordinances have not been updated for several years; and

WHEREAS, the current ordinances, in some sections, are out of compliance with current state statute; and

WHEREAS, the current ordinances do no adequately define or fit current community standards; and

WHEREAS, the City Council finds that such changes would benefit the health, safety and welfare of the City's residents and, therefore, is in the City's best interest.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:

Section 1. G.M.C. Title 5. General Offenses, Chapter 5.30. Nuisances, is amended to read as follows:

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, community development director, 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 any device which is capable of moving itself, or of being moved, from place to place upon wheels, skids or endless tracks, which by reason of mechanical failure or the absence of any component or part is 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 and expired for more than 60 days as required by Colorado Revised Statute. Does not include devices powered or moved solely by human power.

E. "Litter" means rubbish, waste material, refuse, garbage, trash, debris, excrement, urine, offal composed of animal matter or organic matter. Litter includes the accumulation of a single item type or combination of item types such as or composed of chemicals, chemical compound, petroleum product or compound, automobile part or accessory, tire, wheel, furniture, appliances, paper, cardboard, lid, bottle, cap, carton, wrapper, box, wooden object, plastic object, clothing, cloth, metal object, rubber object, leather object, building material, paint, or glass, which is not useable for the manufactured purpose or stored in a way to protect the item for its intended purpose.

F. "Occupant" means and incudes 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" is defined to mean any condition or use of property which is dangerous to health, offensive to community and moral standards or is detrimental to the property of others or which causes or tends to cause substantial diminution of the value of or presents a danger to other property in the neighborhood in which such premises are located.

I. "Visibility" as used in connection with nuisance issues pertain to areas visible at ground level from a neighbor's property or from a public right-of-way.

5.30.020 Nuisances prohibited.

A. It is unlawful for any person to create or maintain, or to knowingly allow or permit the creation or maintenance of, any nuisance as described in this chapter within the city.

Nuisance includes but is not limited to the following:

1. 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;

2. To throw or deposit, or cause to be thrown or deposited, any offal or any offensive matter, or the carcass of any animal, any animal or human fecal material, 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;

3. 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;

4. To allow the growth of vegetation upon any premises or part thereof, or upon the public right-of-way of any street or alley adjacent thereto, when the growth is inconsistent with the current use or development of the property, is overgrown or unsightly in comparison to adjacent properties, or presents a safety risk. Landscaped yards utilizing xeriscape, natural vegetation or landscaping allowed under the City of Gunnison Land Development Code are not considered a nuisance;

5. To allow the cultivation, growth or other prohibited or regulated actions associated with noxious weeds as defined and regulated by City of Gunnison Municipal Code, Title 5, Undesirable Plant Management;

6. To throw or deposit or allow the accumulation of litter upon any property within the city, 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 animals and pest species as defined in Chapter 5.40 or to become a health or safety hazard;

7. To deposit or store or allow to be stored any inoperative vehicles on any property within the city. 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 in compliance with the City of Gunnison Land Development Code, nor shall this provision apply to vehicles defined as collector's items or parts car; provided, that such vehicles are stored in compliance with Colorado Revised Statute;

8. To permit or allow any property to become or remain infested with, insects, rats, vermin or any pest species as defined in this section. Infestation occurs when the property is inhabited or overrun in numbers or quantities large enough to be harmful, threatening or obnoxious;

9. To place upholstered furniture which is not manufactured for outdoor use in an outdoor area, exposed to the elements, where such furniture is visible to neighbors and passersby in the public right-of-way, or who, being the owner, lessee, or manager of such place, knowingly permits such placement. Upholstered furniture includes chairs, couches and mattresses. Outdoor setting includes any porch, patio or other unenclosed structure where the furniture is exposed to the elements;

10. No noise may be produced which is objectionable due to duration, intermittence, frequency, or shrillness where the source of the noise is caused by operating machinery, engines, or other equipment. Sound levels of noise radiating from a property line at a distance of twenty-five feet or more in excess of the db(A) established for the following time periods and zones shall constitute prima facie evidence that such noise is a public nuisance:

ZONE	7:00 AM to 6:59 PM	7:00 PM to 6:59 AM
Residential	55db(A)	50db(A)
Commercial	60dn(A)	55db(A)
Industrial	80db(A)	75db(A)

(a) This section does not apply to:

1. The operation of aircraft or other activities which are subject to federal law with respect to noise control.

2. Construction projects shall be subject to the maximum permissible noise levels specified for industrial zones for the period within which construction is to be completed pursuant to any applicable construction permit issued by proper authority or, if no time limitation is imposed, for a reasonable period of time for completion of project.

3. Emergency repairs, emergency maintenance and snow removal.

11. Anything defined or declared to be a nuisance by any provision of this chapter, City of Gunnison Land Development Code, Title 14 - Technical Codes of the City of Gunnison Municipal Code or statute of the State of Colorado.

12. Any property defined or declared condemned under the City of Gunnison Land Development Code, Title 14 - Technical Codes of the City of Gunnison Municipal Code or statute of the State of Colorado.

B. It is unlawful for any person 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.

C. Any person, organization, or entity who makes or causes any nuisance to exist shall be deemed the author of the nuisance. 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. 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.

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.

1. If, building or premises is occupied, the administrative officer 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.

2. If, building or premises is unoccupied, the administrative officer shall 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.

3. If, the owner or occupant or other person or persons having charge or control of the building or premises cannot be contacted, a notice shall be posted on the property, for a period of 24 hours, giving notice of the City's intent to inspect the property or premises. After the 24 hour period with no response, or if entry is denied, the administrative officer shall not enter upon such building or premises without issuance of a search warrant.

C. Search Warrants. 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.

5.30.40 Notice and 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 and/or occupant of the property in writing, requiring the owner and/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.

B. Time allowed for Abatement. The owner and/or occupant of the property shall be given 7 days, from date of service, 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 may be increased if it appears to the administrative officer, based on the facts and circumstances known that compliance cannot reasonably be made within seven days, in which case a longer period of time may be given.

C. Contents of Notice. The notice to abate issued pursuant to the provisions of this section to the owner and/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 and/or occupant that they 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 and/or occupant fails to comply with directions contained in the written notice or file a written protest thereto in the time allowed, the city may elect to pursue criminal charges, may enter the property, abate the nuisance described therein, and assess the costs thereof to the owner of the property, or may seek any lawful remedies allowed pursuant to GMC, Section 5.30.080.

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 non-owner occupant or resident of the property described in the notice and mailing a copy of the notice by First Class 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 First Class 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.

4. Service of the notice shall be complete upon the date of personal delivery, upon receipt date reflected in return receipt or ten days after posting property as required herein.

E. Non-compliance with Notice. If the owner and/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 shall proceed pursuant to GMC, Section 5.30.080, Enforcement and Remedies.

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 First Class 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 assessment. 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 city attorney and the administrative officer who issued the notice.

B. Municipal court shall schedule and conduct a hearing on the protest at the next available court date, but not less than seven days from the date protest is filed. 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 city attorney and administrative officer who signed the notice of abatement. Such notice shall be mailed to the protesting party and given to the city attorney and 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.

5.30.070 Emergency Abatement

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, 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. The administrative officer may proceed pursuant to GMC, Section 5.30.080, Enforcement and Remedies, without compliance with the time and warrant restraints provided in GMC, Sections 5.30.030 and 5.30.040.

5.30.080 Enforcement and remedies.

A. 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 any lawful means.

B. Any violation of GMC, Section 5.30.020 is a misdemeanor.

Section 2. If any section of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or the constitutionality of the remaining portions of the ordinance. The City Council of the City of Gunnison hereby declares that it would have passed this ordinance, and each section thereof, irrespective of the fact that any one or more sections be declared unconstitutional.

INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this 12th day of July, 2016, on first reading, and introduced, read, passed and adopted on second and final reading this 26th day of July, 2016.

Richard Hagan
Mayor

(SEAL)

ATTEST:

Gail A Davidson
City Clerk

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