

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. 5148

AN ORDINANCE CREATING 8.10.010 ET. SEQ. OF THE GRAND JUNCTION MUNICIPAL CODE (GJMC) PERTAINING TO PROPERTY USED IN CONNECTION WITH CERTAIN CRIMES BEING DECLARED PUBLIC NUISANCES AND CREATING ENFORCEMENT PROCEDURES RELATED THERETO

RECITALS:

The City Council has previously considered the impacts of gray casinos, and in response thereto adopted Ordinance 5125 establishing a moratorium related to skilled gaming establishments. With Ordinance 5125 the City committed to further review and develop other approaches to the operation of businesses that are conducted such that the proprietors and/or patrons of those businesses engage in certain behaviors that are criminal in nature and detriment to the surrounding community/the community's interests.

The City Council having duly considered the matters related to the conduct of such businesses, and the impacts that those businesses have on the safety, health and welfare of the community, does hereby adopt this Ordinance, which defines certain unacceptable conduct on and use of property as Public Nuisance Property(ies) and creates a procedure for abatement of nuisances, as a possible remedy to the problems presented by "gray casinos" as well as any other business that is conducted so that it is a nuisance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

Chapter 8.10.010 *et. seq.* is created and provides as follows (additions are shown in bold print):

8.10.010 Title and Legislative purpose.

The title of this section is PROPERTY USED IN CONNECTION WITH CERTAIN CRIMES DECLARED PUBLIC NUISANCE. The purpose hereof is the abatement of property and/or structures used as, for, or in support of public nuisances. This Ordinance is a matter of purely local and municipal concern, and the abatement property hereby and hereunder is for and in the interest of the protection of public health, safety, and welfare.

Criminal activity on a property is a public nuisance. The purpose of this chapter is to reduce public nuisances created by the use of property in connection with certain crimes. The remedies provided are designed to cause property owners to be attentive to preventing crime on or in their property; to make property owners responsible for the use of their property by tenants, guests, and occupants; and to otherwise deter criminal activity on private property within the City limits.

8.10.020 Definitions.

The following words, terms, and phrases, when used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agent means, if applicable, either a resident manager or a property manager.

Chief of Police includes any person designated by the City Manager as the Police Chief or the designee of the Police Chief for the enforcement of the GJMC.

Controlled substance means the same as in C.R.S. § 18-18-102(5).

Controlled substance analog means the same as in C.R.S. § 18-18-102(6).

Court means the Grand Junction Municipal Court.

Public Nuisance Property (Property) means any kind of structure, edifice, building, or unit(s) thereof or land on or in which any of the following activities has occurred or is occurring, or used to commit, conduct, promote, facilitate, or aid the commission of any of the following activities:

(1) Prostitution within the meaning of GJMC 5.20.220 and 9.04.170; and/or within the meaning of C.R.S. §§ 18-7-201, 18-7-202, 18-7-203, 18-7-204, 18-7-205, 18-7-206;

(2) Human trafficking within the meaning of C.R.S. §§ 18-3-503 or 18-3-504;

(3) Professional Gambling within the meaning of C.R.S. § 18-10-102(8); gambling on premises, C.R.S. § 18-10-102(5); or keeping of a gambling record, C.R.S. § 18-10-102(7); and/or acts within the meaning of GJMC 8.08.100;

(4) The unlawful manufacture, cultivation, growth, production, processing, or possession of marijuana within the meaning of GJMC; and/or within the meaning of C.R.S. § 18-18-405;

(5) The unlawful manufacture, cultivation, growth, production, processing, sale, distribution, storage or use, or possession for any unlawful manufacture, sale, or use, or possession for any unlawful manufacture, sale, distribution, or use of a controlled substance, C.R.S. § 18-18-405, or a controlled substance analog, C.R.S. § 18-18-102, or an imitation controlled substance, C.R.S. § 18-18-421; except for possession of less than sixteen ounces of marijuana.

(6) Unlawful manufacture, sale, or distribution of drug paraphernalia, C.R.S. § 18-18-426;

(7) Prostitution of a child, C.R.S. § 18-7-401(7); soliciting for child prostitution, C.R.S. § 18-7-402; pandering of a child, C.R.S. § 18-7-403; keeping a place of child

prostitution, C.R.S. § 18-7-404; pimping a child, C.R.S. § 18-7-405; or inducement of child prostitution, C.R.S. § 18-7-405.5; or

(8) Sexual exploitation of children, C.R.S. § 18-6-403.

(9) Theft within the meaning of GJMC 9.04.070 and C.R.S. § 18-4-401.

(10) Repeatedly disturbing the peace within the meaning of GJMC 9.04.030 and/or unnecessary noise within the meaning of GJMC 8.16.010; and disorderly conduct within the meaning of GJMC 9.04.040.

(11) A violation of any provision of the Colorado Liquor Code, C.R.S. § 44-3-101 *et. seq.*

(12) A violation of any provision of the Colorado Escort Service Code, C.R.S. § 29-11.8-101 *et. seq.*

(13) A violation of any provision of the Colorado Massage Therapy Practice Act, C.R.S. § 12-235-101 *et. seq.*

(14) A violation of any provision of C.R.S. § 18-12-109 relating to the possession, use, or removal of explosive or incendiary devices, or possession of components thereof.

(15) Repeated acts of discharge of any firearm within the meaning of GJMC excluding discharge of a slingshot, BB gun or pellet gun or discharge that may be authorized by the Chief of Police.

(16) Repeated acts of violence within the meaning of Colorado law applicable to murder in the first degree, C.R.S. § 18-3-102; murder in the second degree, C.R.S. § 18-3-103; assault in the first degree; C.R.S. § 18-3-202; or assault in the second degree, C.R.S. § 18-3-203, but excluding domestic violence acts as defined in C.R.S. § 18-6-800.3(1).

(17) Repeated violations of federal, state, or municipal law which adversely affect the health, safety, or welfare of the residents of the City.

Delivery means the same as in C.R.S. § 18-18-102(7).

Distribution means the same as in C.R.S. § 18-18-102(11).

Firearm means the same as 9.04.050 of the GJMC or as otherwise defined by Colorado law.

Imitation controlled substance means the same as C.R.S. § 18-18-420(3).

Manufacture means the same as C.R.S. § 18-18-102(17).

Marijuana means the same as 5.13.013 of the GJMC.

Owner means any person, agent, firm, corporation, association, or partnership including:

(1) Any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety of the whole or of a part of the property; or

(2) A mortgagee in possession in whom is vested:

a. All or part of the legal title to property; or

b. All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

Person means any natural person, association, partnership, or corporation capable of owning or using property in the City.

Production means the same as C.R.S. § 18-18-102(30).

Prostitution means the same as 5.20.220 and/or 9.04.170 of the GJMC.

Repeated and Repeatedly means the same as “repeatedly” defined in the GJMC, unless stated otherwise.

Sale means the same as in C.R.S. § 18-18-102(33).

Structure means any type of building, dwelling, edifice, enclosure, garage, house, room, shed, shop, store, warehouse, or unit thereof. See also Public Nuisance Property (Property).

8.10.030 Public Nuisance Property prohibited.

(a) It is unlawful for any Structure to be employed or used as Public Nuisance Property within the City.

If a Property is found to be used or employed in violation of this chapter, it is subject to closure for a period of up to one year.

(b) It is unlawful for any person to employ, use, maintain, or make available or allow the employment, use, or maintenance of structures as Public Nuisance Property within the City. Any person who fails to voluntarily cease the use or occupancy of a Property as required by this Code may be removed pursuant to a court order after notice and an opportunity to be heard by the Court pursuant to this chapter. The Court of original jurisdiction for these matters shall be the Grand Junction Municipal Court.

8.10.040 Closure procedure.

(a) When the Chief of Police has reason to believe that a Property is being employed, used, or maintained in violation of the GJMC the Chief of Police may

with the assistance of the City Attorney commence proceedings to cause the closure of the Structure/Property.

Except in cases brought pursuant to section 070, if the Chief of Police wishes to commence proceedings:

(1) The Chief of Police shall notify the owner of record in writing that the Structure/Property has been determined to be Public Nuisance Property. The notice, which shall be in a form approved by the City Attorney, shall contain the following information:

a. The street address or a legal description sufficient for identification of the premises on which the Structure is located.

b. A statement that the Chief of Police has found the Structure/Property to be in violation of this chapter with a reasonably concise description of the conditions leading to his or her findings.

(2) A copy of the notice shall be served on the owner or his or her agent at least ten days prior to the commencement of any judicial action by the City. Service shall be made either personally or by mailing a copy of the notice by certified mail, postage prepaid, with return receipt requested, to the person at his or her address as it appears on the last tax assessment or as may be otherwise known to the Chief of Police.

(3) A copy of the notice shall also be served on the occupant of the Structure not less than ten days prior to the commencement of any judicial proceeding and shall be made either personally or by mailing a copy of the notice by certified mail, postage prepaid, with return receipt requested, to his/her at the structure.

(4) A copy of the notice shall also be posted on the Property not less than ten days prior to the commencement of any judicial proceedings.

(5) The failure of any person or owner to receive actual notice of the determination by the Chief of Police shall not invalidate or otherwise affect the proceedings under this division.

(b) If the Property continues as a Public Nuisance Property despite the giving of the notices described in subsection (a) of this section, the City Attorney is authorized to commence civil proceedings in court seeking the closure of the Structure/Property as well as the imposition of civil penalties against any or all the owner(s) thereof and any such other relief as may be deemed appropriate. No fees shall be assessed for filing pleadings in connection with the enforcement of this chapter.

8.10.050 Enforcement of closure order; costs; civil penalty.

(a) If the Court finds by a preponderance of the evidence that a Structure/Property constitutes Public Nuisance Property as defined in this chapter, the Court may order that it shall be closed for any period of up to one year and that the owner pays to the City a civil penalty to be determined by the Court taking into consideration the factors enumerated in subsection (d) of 8.10.060.

(b) The Court may also authorize the City to physically secure the Structure/Property against use or occupancy if the owner fails to do so within the time specified by the Court. If the City is authorized to secure the Property, all costs reasonably incurred by the City to affect a closure shall be made an assessment lien upon the Property. As used in this subsection, the term "costs" means the costs incurred by the City, including but not limited to labor and materials, for the physical securing of the Structure/Property. The City shall prepare a statement of costs to be used for the labor and materials and administrative fees. Any lien(s) imposed shall be collected in all respects as property taxes.

(c) Any person who is assessed the costs of closure or a civil penalty by the Court shall be personally liable for the payment thereof to the City and the City may reduce an unpaid penalty to an enforceable judgment.

(d) Should the Court order closure of the Structure/Property, the owner shall continue to provide for the maintenance, environmental clean-up, sanitation, utilities, insurance, and security of the Property during the period of closure.

8.10.060 Commencement of actions; burdens of proof; defenses; mitigation of civil penalty.

(a) Except in a proceeding under 8.10.070, if after notice but prior to the commencement of proceedings pursuant to this division an owner specifically stipulates with the City that he or she will pursue a course of action as the parties agree will necessarily abate the conditions giving rise to the violation, the City may agree to stay the commencement of proceedings; however, if the City reasonably believes the owner is not diligently pursuing the action contemplated by the stipulation, it may then commence proceedings pursuant to this chapter.

(b) In an action seeking civil penalties from an owner or the closure of a structure as Public Nuisance Property, the City shall have the initial burden of proof to show by a preponderance of the evidence that the Structure/Property is a Public Nuisance Property.

(c) In any action brought to enforce the terms of this chapter evidence of a structure's general reputation and/or the reputation of person(s) residing in or frequenting it shall be admissible.

(d) In establishing the amount of any civil penalty requested, the Court may consider any of the following factors, as may be appropriate, and shall cite those found applicable:

(1) The actions taken by the owner to mitigate or correct the problem at the Structure/Property;

(2) The financial condition of the owner as demonstrated by sworn financial affidavit(s) filed with the Court;

(3) Whether the problem(s) at the Structure/Property is(are) repeated or continuous;

(4) The magnitude or gravity of the problem(s);

(5) The economic or financial benefit accruing or likely to accrue to the owner because of the conditions at the Structure/Property;

(6) The cooperativeness of the owner with the City;

(7) The cost to the City of investigating and correcting or attempting to correct the condition(s); and

(8) Any other factor deemed by the Court to be relevant.

(e) Relief to innocent owners - affirmative defense. It may be an affirmative defense to enforcement of this chapter if the owner of the real property/structure at issue:

(1) Did not have actual knowledge of the conduct constituting a Public Nuisance Property, or notice of an act or circumstance creating the Public Nuisance Property; and

(2) Upon learning of the conduct constituting a Public Nuisance Property, took reasonable action to prohibit such use of the Property; and

(3) Fully cooperated with all law enforcement agencies in any investigation and prosecution of the criminal acts relating to the Public Nuisance Property; and

(4) Did not participate in the criminal act(s).

(f) The Court may require an owner whose Property has been deemed a Public Nuisance Property to have the Property inspected by city (Fire, Police, Zoning) inspector(s) and Mesa County building and/or health inspectors, where appropriate, at the owner's expense, for the presence of hazards, prior to the Structure/Property being reoccupied.

(1) If the Property is found to have structural, environmental, or other life or health safety hazards, the owner shall bear the expense to have the hazard(s) remediated to the applicable regulatory standard(s).

(2) The owner will bear the expense of having a follow-up inspection by any and all inspectors to confirm the hazard(s) have been remediated.

(3) During remediation, the owner shall continue to provide for the maintenance, environmental clean-up, sanitation, utilities, insurance, and security of the Property.

8.10.070 Closure during pendency of action; emergency closures.

If it is determined that the Property/Structure is an immediate threat to the public health, safety and welfare, the City may apply to the Court for immediate *ex parte* interim relief that is deemed by the City Attorney to be appropriate. In such an event, the notification procedures set forth in section 8.10.040 need not be satisfied. The Court shall order the immediate service of the normal pleadings together with a copy of an emergency order authorizing temporary closure of the Property/Structure until such time as the defendant property owner petitions the Court for review. The Court shall hear any such motion(s) at its earliest convenience.

8.10.080 Relief from closure order.

(a) An owner of a Property/Structure determined to be Public Nuisance Property may obtain relief from the Court's judgment if the owner:

(1) Appears and pays all costs associated with the proceedings under this chapter;

(2) Files a bond in a form acceptable to the City Attorney such that the Court may by order direct in an amount not less than the tax-assessed value of the Property/Structure and for a term on no less than one year or for such longer period as the Court directs that the Property/Structure will comply; and

(3) Enters into a stipulation with the City in a form acceptable to the City Attorney, that the owner will immediately abate the conditions giving rise to the Public Nuisance Property and prevent the conditions from being established or maintained thereafter. The stipulation will then be made part of the Court action and accordingly be enforceable by the Court.

(b) If the owner violates the terms of the stipulation, the City may thereafter apply to the Court for an order awarding up to the entire amount of the bond to the City as a penalty as well as such other relief, including closure of the Property/Structure for any additional period of up to one year, that is deemed by the Court to be appropriate.

8.10.080 Severability.

This chapter is necessary to protect the public health, safety, and welfare of the residents of the City and covers matters of local concern. If any provision of this

chapter is found to be unconstitutional or illegal, such finding shall only invalidate that part or portion found to violate the law. All other provisions shall be deemed severed or severable and shall continue in full force and effect.

8.10.090 Administrative regulations.

The City Manager is authorized to promulgate such rules and regulations as are necessary to effectuate the implementation, administration, and enforcement of this Chapter.

Introduced, passed, and adopted on first reading the 3rd day of May 2023 and ordered published in pamphlet form.

Passed and adopted on second reading this 17th day of May 2023 and ordered published in pamphlet form.



Anna M. Stout
President of the Council

ATTEST:



Amy Phillips
City Clerk



I HEREBY CERTIFY THAT the foregoing Ordinance, being Ordinance No. 5148 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 3rd day of May 2023 and the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, in pamphlet form, at least ten days before its final passage.

I FURTHER CERTIFY THAT a Public Hearing was held on the 17th day of May 2023, at which Ordinance No. 5148 was read, considered, adopted and ordered published in pamphlet form by the Grand Junction City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 24th day of May 2023.



Deputy City Clerk

Published: May 05, 2023
Published: May 24, 2023
Effective: June 23, 2023

