

ORDINANCE NO. 4233

AN ORDINANCE AMENDING CHAPTER 2 OF THE CITY CODE OF ORDINANCES TO INCLUDE A NEW ARTICLE VI, ADDING AN ADMINISTRATIVE ENFORCEMENT PROCESS TO ADDRESS VIOLATIONS OF THE CITY CODE

AND

AMENDING CHAPTER 16, ARTICLE III, SECTION 16.60 TO PROVIDE THAT A NOTICE OF VIOLATION ISSUED PURSUANT TO CHAPTER 2, ARTICLE VI, SHALL ALSO CONSTITUTE A NOTICE TO ABATE A NUISANCE

AND

AMENDING CHAPTER 16, ARTICLE VII, SECTION 16-141 AND SECTION 16-144 TO REVISE DEFINITIONS AND ENFORCEMENT OF THE STORMWATER MANAGEMENT PROGRAM

RECITALS:

The City Council finds that the violation of certain provisions of the City's Code ("Code") affects the livability of the City's neighborhoods and that residential, commercial and industrial neighborhoods in the City all experience problems with such violations; and

The City Council desires compliance with ordinances that affect the quality of life in the City and expects those who violate those ordinances to bear the cost of enforcement; and

The City Council believes that increased enforcement of these ordinances would benefit all City residents and businesses; and

The City Council finds that there is a need for an alternative method of enforcement for certain specified violations of the Code; and

The City Council further finds that an appropriate method of enforcement for such violations is an administration citation program which imposes administrative penalties for certain violations of the Code; and

The City Council further finds that certain amendments should be made to the Code to accommodate the administrative citation program; and

The City Council therefore does amend Chapter 2 of the Code to include a new Article VI to allow for the administrative enforcement of the Code, amends Section 16-60 of the Code to provide that a notice of violation served pursuant to the administrative enforcement article shall constitute service of a notice to abate, and amends Chapter 16, Article VII, Sections 16-141 and 16-144 to revise definitions and enforcement of the stormwater management program.

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

1. Chapter 2 of the Grand Junction Code of Ordinances, is hereby amended by adding a new Article VI, Administrative Enforcement, as follows:

ARTICLE VI. ADMINISTRATIVE ENFORCEMENT

SEC. 2-80. PURPOSE; SCOPE.

THE PURPOSE OF THIS ARTICLE IS TO ENCOURAGE PROMPT COMPLIANCE WITH THIS CODE AND PAYMENT OF PENALTIES FOR VIOLATIONS THEREOF. THIS ARTICLE PROVIDES FOR ADMINISTRATIVE PENALTIES THAT MAY BE IMPOSED FOR VIOLATION OF THE FOLLOWING PORTIONS OF THIS CODE: CHAPTER 6, ANIMALS; CHAPTER 16, ENVIRONMENT; CHAPTER 24, OFFENSES; CHAPTER 30, SOLID WASTE; CHAPTER 32, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES; CHAPTER 34, SECTION 34-107 REGARDING YARD SALES; CHAPTER 40, VEGETATION, AND CHAPTER 33, THE ZONING AND DEVELOPMENT CODE (TO INCLUDE THE TEDS AND SWMM MANUALS).

SEC. 2-81. DEFINITIONS.

FOR THE PURPOSES OF THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE MEANINGS STATED BELOW.

ADMINISTRATIVE HEARING OFFICER OR AO MEANS THE PERSON WITH EXCLUSIVE AUTHORITY TO HEAR APPEALS FROM ADMINISTRATIVE CITATIONS ISSUED UNDER THIS ARTICLE. THE AO MAY BE A MUNICIPAL COURT JUDGE.

APPLICABLE SECTIONS MEANS THOSE SECTIONS IN THE MUNICIPAL CODE CONTAINED WITHIN THE CHAPTERS STATED IN SECTION 2-80.

CODE ENFORCEMENT OFFICER OR CEO SHALL MEAN THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE, PROPERTY INSPECTOR OR ANY OTHER CITY OFFICIAL OR EMPLOYEE CHARGED WITH ENFORCING THE PROVISIONS OF THIS ARTICLE.

CITY MANAGER SHALL MEAN THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE.

MUNICIPAL COURT MEANS THE MUNICIPAL COURT FOR THE CITY OF GRAND JUNCTION, COLORADO.

NOTICE OF VIOLATION MEANS A FORMAL WRITTEN NOTICE DELIVERED, EITHER BY HAND DELIVERY, CERTIFIED MAIL OR POSTED ON THE SUBJECT PROPERTY, TO A PERSON OR ENTITY WHO HAS VIOLATED ANY CODE SECTION(S) REFERENCED IN SECTION 2-80. THE NOTICE SHALL CONTAIN EITHER THE PARCEL NUMBER OR ADDRESS, NAME OR ENTITY TO WHOM THE NOTICE IS BEING DELIVERED, SECTION(S) OF THE CODE ALLEGEDLY BEING VIOLATED, A TIME FRAME IN WHICH TO CORRECT THE VIOLATION AND INFORMATION REGARDING REMEDIES THE CITY MAY TAKE TO ACHIEVE COMPLIANCE.

RESPONSIBLE PARTY SHALL MEAN A PERSON OR ENTITY WHO HAS VIOLATED THIS CODE OR, IN THE CASE OF PROPERTY SUBJECT TO AN ADMINISTRATIVE CITATION UNDER THIS ARTICLE, WHO HAS POSSESSION OR CONTROL OF ANY REAL PROPERTY OR PREMISES, WHETHER AS OWNER, OCCUPANT OR TENANT, OR IN THE CASE OF A MOTOR VEHICLE, AS OWNER OR OPERATOR OF THE SAME.

SEC. 2-82. AUTHORITY.

(A) ANY RESPONSIBLE PARTY VIOLATING APPLICABLE SECTIONS OF THIS CODE MAY BE ISSUED AN ADMINISTRATIVE CITATION BY A CEO AS PROVIDED IN THIS ARTICLE.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CODE, RESPONSIBLE PARTIES CITED UNDER THE PROVISIONS OF THIS ARTICLE SHALL HAVE ONLY THE APPEAL RIGHTS GRANTED HEREIN.

(C) ADMINISTRATIVE CITATIONS SHALL BE ISSUED ONLY AFTER THE RESPONSIBLE PARTY HAS RECEIVED A NOTICE OF VIOLATION AND HAS BEEN GIVEN TIME TO COMPLY AS STATED IN THE NOTICE OF VIOLATION.

(D) EACH DAY A VIOLATION EXISTS OR CONTINUES SHALL CONSTITUTE A SEPARATE AND DISTINCT OFFENSE FOR WHICH A SEPARATE ADMINISTRATIVE CITATION MAY BE ISSUED; HOWEVER, ONCE AN ADMINISTRATIVE CITATION HAS BEEN ISSUED FOR A VIOLATION OR VIOLATIONS, NO ADDITIONAL ADMINISTRATIVE CITATION SHALL BE ISSUED FOR THE SAME VIOLATION(S) FOR TEN (10) DAYS OR, IF THE RESPONSIBLE PARTY APPEALS, UNTIL AFTER THE APPEAL HAS BEEN HEARD AND THE RESPONSIBLE PARTY HAS NOT COMPLIED WITH AN ORDER OF THE AO WITHIN TEN (10) DAYS OF ITS ISSUANCE OR SUCH OTHER TIME AS THE AO HAS SPECIFIED.

(E) A FINE ASSESSED BY MEANS OF AN ADMINISTRATIVE CITATION ISSUED BY THE CEO SHALL BE PAYABLE DIRECTLY TO THE CITY, AND IF NOT TIMELY PAID, SHALL BE COLLECTED IN ACCORDANCE WITH THE PROCEDURES SPECIFIED IN THIS ARTICLE.

(F) ENFORCEMENT ACTIONS FOR VIOLATIONS OF APPLICABLE CODE SECTIONS ARE INTENDED TO BE ALTERNATIVE IN NATURE. THE CITY MAY PURSUE A CIVIL, CRIMINAL OR ADMINISTRATIVE ACTION, AS DEEMED NECESSARY BY THE CITY, AGAINST A RESPONSIBLE PARTY, BUT ONCE AN ACTION IS COMMENCED ALL REMEDIES MUST BE PURSUED IN THAT VENUE, UNLESS THE CITY CHOOSES TO PURSUE AN ALTERNATIVE ACTION UPON STAYING THE ORIGINAL ACTION. NOTHING IN THIS ARTICLE SHALL PRECLUDE A CEO, IN HIS/HER SOLE DISCRETION, FROM IMMEDIATELY ISSUING A SUMMONS TO COURT AND/OR A CEASE AND DESIST ORDER, FOR ANY ALLEGED VIOLATION.

SEC. 2-83. NOTICE OF VIOLATION.

(A) UPON BECOMING AWARE OF A VIOLATION OF THE CODE, A CEO MAY ISSUE A NOTICE OF VIOLATION TO THE RESPONSIBLE PARTY. THE NOTICE SHALL STATE THE DATE AND LOCATION OF THE VIOLATION, THE APPROXIMATE TIME THE VIOLATION WAS OBSERVED AND IDENTIFYING, WHEN APPLICABLE, THE PROPERTY IN VIOLATION BY ADDRESS, LEGAL DESCRIPTION OR PARCEL NUMBER. THE NOTICE SHALL REFER TO THE APPLICABLE CODE SECTION VIOLATED, DESCRIBE THE VIOLATION AND DESCRIBE THE ACTION REQUIRED TO CORRECT THE VIOLATION. THE NOTICE SHALL REQUIRE THE RESPONSIBLE PARTY TO CORRECT THE VIOLATION WITHIN TEN (10) DAYS, AND SHALL EXPLAIN THE CONSEQUENCES OF FAILURE TO CORRECT SAID VIOLATION(S), INCLUDING THE ISSUANCE OF AN ADMINISTRATIVE CITATION. THE TERMS OF ANY CEASE AND DESIST ORDER SHALL SEPARATELY STATE THE TERMS OF THAT ORDER.

(B) SERVICE OF A NOTICE OF A VIOLATION ON THE RESPONSIBLE PARTY SHALL BE BY ANY OF THE FOLLOWING MEANS:

(1) TO THE RESPONSIBLE PARTY AT THE SITE OF THE VIOLATION(S) OR AT ANY OTHER LOCATION BY PERSONALLY DELIVERING A COPY OF THE NOTICE OF VIOLATION TO THE RESPONSIBLE PARTY; OR

(2) A COPY OF THE NOTICE MAY BE MAILED BY FIRST CLASS MAIL TO THE LAST KNOWN ADDRESS OF THE RESPONSIBLE PARTY AS THE SAME IS REFLECTED IN THE CITY OR COUNTY RECORDS; OR

(3) A COPY OF THE NOTICE OF VIOLATION MAY BE POSTED IN A CONSPICUOUS PLACE ON PREMISES. THE CEO SHALL PHOTOGRAPH THE POSTING WITH A CAMERA SHOWING THE DATE AND TIME OF THE POSTING. THE PHOTOGRAPH SHOWING THE POSTING SHALL BE MAINTAINED BY THE CEO DURING THE PROCEEDING.

SEC. 2-84. ADMINISTRATIVE CITATION.

(A) IF THE RESPONSIBLE PARTY HAS FAILED TO CORRECT THE VIOLATION(S) NOTED IN THE NOTICE OF VIOLATION WITHIN THE TIME PROVIDED ON SUCH NOTICE, A CEO MAY ISSUE AN ADMINISTRATIVE CITATION TO THE RESPONSIBLE PARTY ON A FORM APPROVED BY THE CITY ATTORNEY.

(B) THE CEO MAY REQUIRE THAT THE RESPONSIBLE PARTY PROVIDE EVIDENCE OF THE RESPONSIBLE PARTY'S IDENTITY AND RESIDENTIAL AND/OR WORKING ADDRESS.

(C) THE CEO SHALL REASONABLY ATTEMPT TO ISSUE THE ADMINISTRATIVE CITATION TO THE RESPONSIBLE PARTY AT THE SITE OF ANY VIOLATION(S). THE CEO MAY ISSUE THE ADMINISTRATIVE CITATION TO THE RESPONSIBLE PARTY BY THE METHODS DESCRIBED IN SUBSECTION 2-83(B), ABOVE.

(D) THE CEO SHALL ATTEMPT TO OBTAIN THE SIGNATURE OF THE PERSON RECEIVING THE ADMINISTRATIVE CITATION ON THE CITATION. IF THAT PERSON REFUSES OR FAILS TO SIGN THE ADMINISTRATIVE CITATION, THE FAILURE OR REFUSAL TO SIGN SHALL NOT AFFECT THE VALIDITY OF THE CITATION AND SUBSEQUENT PROCEEDINGS.

(E) NOTICE SHALL BE DEEMED SERVED ON THE EARLIEST OF: (I) THE DATE OF RECEIPT BY THE RESPONSIBLE PARTY, IF PERSONALLY SERVED; (II) THE SECOND DAY AFTER THE MAILING OF THE ADMINISTRATIVE CITATION; OR (III) THE DATE THE ADMINISTRATIVE CITATION WAS POSTED.

SEC. 2-85. CONTENTS OF ADMINISTRATIVE CITATION.

(A) THE ADMINISTRATIVE CITATION SHALL STATE THE LOCATION OF THE VIOLATION(S) AND THE DATE AND APPROXIMATE TIME THE VIOLATION(S) WAS OBSERVED. WHERE APPLICABLE, THE ADMINISTRATIVE CITATION SHALL IDENTIFY THE PROPERTY IN VIOLATION BY ADDRESS OR LEGAL DESCRIPTION.

(B) THE ADMINISTRATIVE CITATION SHALL REFER TO THE APPLICABLE CODE SECTION(S) VIOLATED AND DESCRIBE THE VIOLATION(S).

(C) THE ADMINISTRATIVE CITATION SHALL DESCRIBE THE ACTION REQUIRED TO CORRECT THE VIOLATION(S).

(D) THE ADMINISTRATIVE CITATION SHALL: 1) REQUIRE THE RESPONSIBLE PARTY TO CORRECT THE VIOLATION(S) IMMEDIATELY, 2) PROVIDE A DATE FOR REINSPECTION BY THE CEO, AND 3) SHALL EXPLAIN THE CONSEQUENCES OF FAILURE TO CORRECT SAID VIOLATION(S), TO INCLUDE IMMEDIATE ABATEMENT IF NECESSARY TO PROTECT THE PUBLIC'S HEALTH AND/OR SAFETY.

(E) THE ADMINISTRATIVE CITATION SHALL STATE THE AMOUNT OF FINE IMPOSED FOR THE VIOLATION(S).

(F) THE ADMINISTRATIVE CITATION SHALL EXPLAIN HOW THE FINE SHALL BE PAID, THE TIME PERIOD BY WHICH IT SHALL BE PAID AND THE CONSEQUENCES OF FAILURE TO PAY THE FINE.

(G) THE ADMINISTRATIVE CITATION SHALL BRIEFLY STATE THE PROCESS FOR APPEALING THE ADMINISTRATIVE CITATION.

(H) THE ADMINISTRATIVE CITATION SHALL CONTAIN THE SIGNATURE OF THE CEO AND THE SIGNATURE OF THE RESPONSIBLE PARTY IF IT CAN BE OBTAINED.

SEC. 2-86. APPEAL OF ADMINISTRATIVE CITATION.

(A) A PERSON SERVED WITH AN ADMINISTRATIVE CITATION MAY FILE A NOTICE OF APPEAL WITHIN FIVE (5) CALENDAR DAYS AFTER THE SERVICE OF THE ADMINISTRATIVE CITATION. STRICT COMPLIANCE WITH THE FIVE (5) DAY NOTICE SHALL BE A JURISDICTIONAL PREREQUISITE TO ANY APPEAL BROUGHT UNDER THIS ARTICLE, AND FAILURE TO COMPLY SHALL BAR ANY APPEAL.

(B) THE NOTICE OF APPEAL SHALL BE MADE IN WRITING AND SHALL BE FILED WITH THE MUNICIPAL COURT IN PERSON, BY FACSIMILE TRANSMISSION OR BY MAIL. REGARDLESS OF THE MANNER OF FILING SUCH APPEAL, THE NOTICE OF APPEAL

MUST BE FILED WITH THE MUNICIPAL COURT WITHIN FIVE (5) CALENDAR DAYS FROM THE DATE THE ADMINISTRATIVE CITATION WAS SERVED.

(C) AS SOON AS PRACTICABLE AFTER RECEIVING THE WRITTEN NOTICE OF APPEAL, THE MUNICIPAL COURT SHALL ASSIGN AN AO WHO SHALL SCHEDULE A DATE, TIME AND LOCATION FOR THE HEARING.

(D) WRITTEN NOTICE OF THE DATE, TIME AND LOCATION OF THE HEARING SHALL BE PERSONALLY SERVED UPON OR SENT BY FIRST CLASS MAIL TO THE RESPONSIBLE PARTY AT LEAST TEN (10) CALENDAR DAYS PRIOR TO THE DATE OF THE HEARING. THE HEARING SHALL BE HELD NO MORE THAN TWENTY-ONE (21) DAYS AFTER THE DATE UPON WHICH THE ADMINISTRATIVE CITATION WAS ISSUED.

(E) IN COMPUTING THE DAY A NOTICE OF APPEAL MUST BE FILED OR THE DAY BY WHICH A HEARING MUST BE HELD, THE FIRST DAY IS EXCLUDED AND THE LAST DAY IS INCLUDED. IF THE LAST DAY OF ANY PERIOD IS A SATURDAY, SUNDAY OR LEGAL HOLIDAY, THE PERIOD IS EXTENDED TO THE FIRST DAY THEREAFTER WHICH IS NOT A SATURDAY, SUNDAY OR LEGAL HOLIDAY.

SEC. 2-87. ADMINISTRATIVE HEARING OFFICERS.

(A) THE ADMINISTRATIVE HEARING OFFICER MUST BE AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF COLORADO WITH A MINIMUM OF THREE (3) YEARS OF EXPERIENCE.

(B) ANY PERSON DESIGNATED TO SERVE AS AN AO IS SUBJECT TO DISQUALIFICATION FOR BIAS, PREJUDICE, INTEREST OR FOR ANY OTHER REASON FOR WHICH A JUDGE MAY BE DISQUALIFIED IN A COURT OF LAW.

SEC. 2-88. ADMINISTRATIVE APPEALS.

(A) ADMINISTRATIVE APPEALS ARE INTENDED TO BE LESS FORMAL; SPECIFICALLY FORMAL RULES OF EVIDENCE AND DISCOVERY DO NOT APPLY. THE PROCEDURE AND FORMAT OF THE ADMINISTRATIVE HEARING SHALL FOLLOW THE PROCEDURES PROVIDED IN THIS SECTION.

(B) THE PARTIES TO AN ADMINISTRATIVE APPEAL SHALL BE THE RESPONSIBLE PARTY AND THE CITY, BY AND THROUGH THE CEO AND CITY ATTORNEY. PARTIES MAY BE REPRESENTED BY LEGAL COUNSEL. EACH PARTY MAY

CALL AND QUESTION WITNESSES, CROSS-EXAMINE WITNESSES AND PRESENT EVIDENCE.

(C) THE AO, AT THE REQUEST OF ANY PARTY TO THE HEARING, MAY SUBPOENA WITNESSES, DOCUMENTS AND OTHER EVIDENCE WHERE THE ATTENDANCE OF THE WITNESS OR THE ADMISSION OF EVIDENCE IS DEEMED NECESSARY TO DECIDE THE ISSUES AT THE HEARING. ALL COSTS RELATED TO THE SUBPOENA, INCLUDING WITNESS AND MILEAGE FEES, SHALL BE BORNE BY THE PARTY REQUESTING THE SUBPOENA. THE FORM OF, AND THE PROCESS FOR ISSUING, SUBPOENAS SHALL BE THE SAME AS IN THE MUNICIPAL COURT.

(D) THE AO, AN ATTORNEY FOR THE RESPONSIBLE PARTY, AND/OR THE CITY ATTORNEY SHALL HAVE THE POWER TO CALL AND QUESTION WITNESSES; THE AO SHALL REVIEW AND RULE ON THE RELEVANCY OF DOCUMENTARY OR OTHER TANGIBLE EVIDENCE AND RULE ON EVIDENTIARY QUESTIONS.

(E) THE ONLY ISSUE TO BE DECIDED BY THE AO IS WHETHER THE CEO EXCEEDED HIS/HER AUTHORITY IN ISSUING THE ADMINISTRATIVE CITATION. THE CITY BEARS THE BURDEN OF PROOF TO ESTABLISH THE EXISTENCE OF A VIOLATION OF THE CODE. IN THE CASE OF A NUISANCE ABATEMENT HEARING, THE CITY BEARS THE BURDEN OF PROOF TO ESTABLISH THE EXISTENCE OF A NUISANCE. THE CITY'S MEETING OF THIS BURDEN OF PROOF SHALL CONSTITUTE PRIMA FACIE EVIDENCE THAT THE CEO DID NOT EXCEED HIS/HER AUTHORITY. THE APPELLANT SHALL HAVE THE BURDEN OF REBUTTING SUCH EVIDENCE.

(F) THE STANDARD OF PROOF REQUIRED IN AN ADMINISTRATIVE APPEAL IS A PREPONDERANCE OF THE EVIDENCE.

(G) COPIES, PHOTOGRAPHS AND PHOTOCOPIES, IF DETERMINED TO BE REASONABLY RELIABLE, MAY BE ADMITTED INTO EVIDENCE OR SUBSTITUTED IN EVIDENCE IN PLACE OF ORIGINAL DOCUMENTS.

(H) HEARINGS SHALL BE RECORDED BY ELECTRONIC MEANS AND TRANSCRIPTS OF SUCH RECORDINGS SHALL BE MADE AT THE EXPENSE OF THE PARTY REQUESTING THE TRANSCRIPT.

(I) WHENEVER IT APPEARS THAT A PETITION IS NOT FILED WITHIN THE TIME PERMITTED BY THE PARTICULAR LAW OR ORDINANCE INVOLVED, OR THAT THE AO

FOR SOME OTHER REASON LACKS JURISDICTION, THE CASE MAY BE DISMISSED ON THE MOTION OF ANY PARTY OR ON THE AO'S OWN MOTION.

(J) THE DECISION OF THE AO SHALL BE KNOWN AS AN ADMINISTRATIVE ENFORCEMENT ORDER.

(K) THE AO MAY UPHOLD THE ADMINISTRATIVE CITATION AND ALL PENALTIES OR DISMISS THE ADMINISTRATIVE CITATION AND ALL PENALTIES OR MAY WAIVE OR CONDITIONALLY REDUCE THE PENALTIES ASSESSED BY THE ADMINISTRATIVE CITATION. THE AO MAY ALSO IMPOSE CONDITIONS AND DEADLINES TO CORRECT THE VIOLATIONS OR REQUIRE PAYMENT OF ANY OUTSTANDING PENALTIES.

(L) IN THE EVENT THAT THE AO DOES NOT DISMISS THE ADMINISTRATIVE CITATION, THE AO SHALL ASSESS REASONABLE ADMINISTRATIVE COSTS OF NOT LESS THAN ONE HUNDRED DOLLARS (\$100.00), BUT NOT TO EXCEED TWO HUNDRED FIFTY DOLLARS (\$250.00).

(M) THE ADMINISTRATIVE ENFORCEMENT ORDER SHALL BECOME FINAL ON THE DATE OF MAILING THE ORDER TO THE RESPONSIBLE PARTY. A COPY OF THE ORDER SHALL BE PROVIDED TO THE CITY.

SEC. 2-89. FAILURE TO OBEY SUBPOENA.

IT IS UNLAWFUL FOR ANY PERSON TO REFUSE TO OBEY A SUBPOENA ISSUED BY AN AO. FAILURE TO OBEY A SUBPOENA CONSTITUTES CONTEMPT AND MAY BE CRIMINALLY PROSECUTED AND HAVE PENALTIES IMPOSED IN THE SAME MANNER AS VIOLATION OF A MUNICIPAL COURT SUBPOENA.

SEC. 2-90. FAILURE TO ATTEND ADMINISTRATIVE APPEAL.

ANY RESPONSIBLE PARTY WHO FAILS TO APPEAR AT THE HEARING IS DEEMED TO WAIVE THE RIGHT TO A HEARING AND THE ADJUDICATION OF THE ISSUES RELATED TO THE HEARING, PROVIDED THAT PROPER NOTICE OF THE HEARING HAS BEEN PROVIDED.

SEC. 2-91. FAILURE TO COMPLY WITH ADMINISTRATIVE ENFORCEMENT ORDER.

IT IS UNLAWFUL FOR A RESPONSIBLE PARTY WHO HAS BEEN SERVED WITH A COPY OF THE FINAL ADMINISTRATIVE ENFORCEMENT ORDER TO FAIL TO COMPLY WITH THE ORDER. FAILURE TO COMPLY WITH A FINAL ADMINISTRATIVE

ENFORCEMENT ORDER MAY BE CRIMINALLY PROSECUTED AND HAVE PENALTIES IMPOSED.

SEC. 2-92. PENALTIES ASSESSED.

(A) THE CITY MANAGER SHALL DEVELOP A FINE SCHEDULE BASED UPON THE CITY MANAGER'S ASSESSMENT OF THE COST TO THE CITY FOR ENFORCING THE PROVISIONS OF THIS ARTICLE. SUCH SCHEDULE SHALL BE APPROVED BY THE CITY COUNCIL. THE SCHEDULE OF FINES SHALL BE GRADUATED IN AMOUNT, WITH THE SMALLEST FINE BEING ASSESSED FOR THE FIRST ADMINISTRATIVE CITATION AND INCREASINGLY LARGER FINES FOR SECOND, THIRD AND SUBSEQUENT ADMINISTRATIVE CITATIONS. NO SINGLE FINE ASSESSED FOR AN ADMINISTRATIVE CITATION SHALL EXCEED ONE THOUSAND DOLLARS (\$1,000.00). THE SCHEDULE OF FINES SHALL BE AMENDED NO MORE THAN ONCE PER YEAR.

(B) PAYMENT OF THE FINE SHALL NOT EXCUSE THE FAILURE TO CORRECT THE VIOLATION(S) NOR SHALL IT BAR FURTHER ENFORCEMENT ACTION BY THE CITY.

(C) ALL FINES ASSESSED SHALL BE PAYABLE TO THE CITY OF GRAND JUNCTION.

SEC. 2-93. FAILURE TO PAY FINES.

(A) THE FAILURE OF ANY RESPONSIBLE PARTY TO PAY THE FINES ASSESSED BY AN ADMINISTRATIVE CITATION WITHIN THE TIME SPECIFIED ON THE CITATION OR ADMINISTRATIVE ENFORCEMENT ORDER, IF AN ADMINISTRATIVE HEARING IS HELD, MAY RESULT IN THE IMPOSITION OF A LATE FEE OF FIFTY DOLLARS (\$50.00), A TWENTY PERCENT (20%) CHARGE TO DEFRAY THE COST OF COLLECTION, AND INTEREST AT A RATE OF EIGHT PERCENT (8%) PER ANNUM ON ALL UNPAID AMOUNTS.

(B) IN THE EVENT OF FAILURE TO PAY ALL FINES ASSESSED, THE CITY MANAGER MAY REFER THE MATTER TO THE CITY ATTORNEY FOR COLLECTION.

(C) IN THE CASE OF DELINQUENT CHARGES, ASSESSMENTS OR TAXES, INCLUDING FINES AND THE COSTS OF NUISANCE ABATEMENT, THE CITY MANAGER SHALL, PURSUANT TO C.R.S. § 31-20-105, CERTIFY THE SAME TO THE TREASURER OF MESA COUNTY TO BE COLLECTED AND PAID OVER BY THE TREASURER OF THE COUNTY IN THE SAME MANNER AS TAXES ARE COLLECTED.

(D) AN ACTION OR OTHER PROCESS PROVIDED BY LAW MAY BE MAINTAINED BY THE CITY ATTORNEY TO RECOVER OR COLLECT ANY AMOUNTS, INCLUDING LATE FEES, INTERESTS, AND ADMINISTRATIVE COSTS, OWING UNDER THIS ARTICLE.

2. Chapter 16, Section 16-60, is also hereby amended as follows:

Sec. 16-60. NOTICE AND ABATEMENT PROCEDURES.

(A) **NOTICE TO ABATE.** UPON THE DISCOVERY OF ANY NUISANCE ON PUBLIC OR PRIVATE PROPERTY IN THE CITY, THE CITY MANAGER MAY, IN THE EXERCISE OF HIS OR HER DISCRETION, NOTIFY THE RESPONSIBLE PARTY IN WRITING, REQUIRING THE RESPONSIBLE PARTY TO REMOVE AND ABATE FROM THE PROPERTY THE THING OR THINGS THEREIN DESCRIBED AS A NUISANCE. SERVICE OF A NOTICE OF VIOLATION BY A CEO PURSUANT TO SECTION 2-83 OF THIS CODE SHALL BE CONSIDERED SERVICE OF A NOTICE TO ABATE AND THE CITY MAY BEGIN THE ABATEMENT PROCESS WITH THE APPLICATION FOR ABATEMENT ORDER. FOR ANY NUISANCE WHICH DOES NOT THREATEN IMMINENT DANGER OF DAMAGE OR INJURY, AND FOR WHICH A DISCRETIONARY NOTICE TO ABATE HAS BEEN ISSUED, THE REASONABLE TIME FOR ABATEMENT SHALL NOT EXCEED SEVEN (7) DAYS UNLESS IT APPEARS FROM THE FACTS AND CIRCUMSTANCES THAT COMPLIANCE COULD NOT REASONABLY BE MADE WITHIN SEVEN (7) DAYS OR THAT A GOOD FAITH ATTEMPT AT COMPLIANCE IS BEING MADE.

SERVICE OF NOTICE. IF WRITTEN NOTICE TO ABATE IS GIVEN, IT SHALL BE SERVED BY:

(1) PERSONALLY DELIVERING A COPY OF THE NOTICE TO THE RESPONSIBLE PARTY DESCRIBED IN THE NOTICE IF THE RESPONSIBLE PARTY ALSO RESIDES AT THE PROPERTY; OR

(2) MAILING A COPY OF THE NOTICE BY FIRST CLASS OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE LAST KNOWN ADDRESS OF THE RESPONSIBLE PARTY AS REFLECTED IN THE CITY AND/OR COUNTY REAL ESTATE OR OTHER RECORDS; OR

(3). POSTING A COPY OF THE NOTICE IN A CONSPICUOUS PLACE AT THE PREMISES.

(B) *ABATEMENT ORDER*: UPON THE EXPIRATION OF THE PERIOD OF NOTICE, OR AT ANY TIME THEREAFTER, IF THE NUISANCE HAS NOT BEEN ABATED ON THE PROPERTY DESCRIBED IN SUCH NOTICE, THE CITY MAY APPLY TO THE MUNICIPAL COURT FOR AN ABATEMENT ORDER, AS FOLLOWS:

(1) THE APPLICATION SHALL BE ACCOMPANIED BY AN AFFIDAVIT AFFIRMING THAT THE CITY HAS COMPLIED WITH THE NOTICE REQUIREMENTS OF SUBSECTION (A) AND THAT THE OWNER HAS FAILED TO ABATE THE IDENTIFIED NUISANCE UPON THE PROPERTY.

(2) THE CITY SHALL GIVE NOTICE TO THE RESPONSIBLE PARTY OF ITS APPLICATION FOR THE ABATEMENT OF ORDER IN THE SAME MANNER AS PROVIDED ABOVE FOR SERVICE OF THE ORIGINAL NOTICE.

(3) THE NOTICE OF APPLICATION FOR AN ABATEMENT ORDER SHALL INCLUDE A COPY OF THE CITY'S APPLICATION AND ITS AFFIDAVIT IN SUPPORT THEREOF, AS WELL AS THE TIME, DATE, AND PLACE AT WHICH THE CITY WILL APPEAR BEFORE THE MUNICIPAL COURT TO REQUEST ENTRY OF THE ABATEMENT ORDER.

(4) AT THE STATED TIME, DATE, AND PLACE, THE MUNICIPAL COURT JUDGE SHALL REVIEW THE APPLICATION FOR ADMINISTRATIVE ABATEMENT ORDER, THE AFFIDAVIT, ANY STATEMENT OF THE CITY IN SUPPORT THEREOF, AS WELL AS ANY STATEMENT AND EVIDENCE PRESENTED BY THE RESPONSIBLE PARTY, IF PRESENT.

(5) THEREAFTER, THE MUNICIPAL COURT IS AUTHORIZED TO ENTER AN ORDER PERMITTING THE CITY TO ENTER UPON SUCH PROPERTY, ABATE THE SAME AND RECOVER ITS COSTS.

(C) *ABATEMENT WITHOUT NOTICE OR COURT ORDER*. ANY NUISANCE LOCATED OR FOUND IN OR UPON ANY STREET, AVENUE, ALLEY, PUBLIC SIDEWALK, HIGHWAY, PUBLIC RIGHT-OF-WAY, PUBLIC GROUNDS, PARK, RECREATION FACILITY, OR PUBLIC PROPERTY IN THE CITY MAY BE ABATED WITHOUT NOTICE.

3. Chapter 16, Article III, new Sections 16-61 to 16-65 are added as follows:

SEC. 16-61. EMERGENCY ABATEMENT.

IF IN THE JUDGMENT OF THE CEO A NUISANCE IS A CAUSE OF IMMINENT DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE, ANY SUCH NUISANCE MAY BE SUMMARILY ABATED BY THE CITY, AND COSTS OF ABATEMENT SHALL BE CHARGED AND RECOVERED AS PROVIDED BY SECTION 16-63.

SEC. 16-62. VIOLATIONS AND PENALTY.

(A) ANY PERSON VIOLATING ANY PROVISION OF THIS ARTICLE SHALL BE SUBJECT TO THE PENALTIES SET FORTH IN SECTION 2-92 OF THIS CODE; PROVIDED, HOWEVER THAT NOTHING CONTAINED IN THIS SECTION OR SECTION 2-92 SHALL IMPAIR THE ABILITY OF THE CITY TO ENFORCE THE OTHER REMEDIAL PROVISIONS PROVIDED IN THIS ARTICLE.

(B) ANY RESPONSIBLE PARTY VIOLATING ANY PROVISION OF THIS ARTICLE SHALL BE GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, SHALL BE SUBJECT TO FINES SET FORTH IN ACCORDANCE WITH SECTION 2-92 OF THIS CODE.

(C) IN LEVYING AND IMPOSING FINES UPON CONVICTION OF ANY OF THE VIOLATION(S) SPECIFIED IN THE CODE, THE COURT SHALL HAVE NO AUTHORITY TO REDUCE OR SUSPEND ALL OR ANY PORTION OF THE FINES, IT BEING THE EXPRESSED INTENT OF THE CITY COUNCIL THAT THE FINES SPECIFIED IN THE FINE SCHEDULE BE STRICTLY ADHERED TO.

(D) AS A PORTION OF ANY JUDGMENT, FINE OR ASSESSMENT LEVIED UPON CONVICTION OF A VIOLATION OF THIS CODE, THE COURT SHALL ORDER THAT THE VIOLATION BE ABATED WITHIN A TIME ESTABLISHED BY THE COURT, BUT IN NO EVENT TO EXCEED THIRTY (30) DAYS FROM THE DATE OF CONVICTION. FAILURE TO ABATE WITHIN THE TIME SO ORDERED MAY CONSTITUTE CONTEMPT OF COURT, AND SHALL BE PUNISHABLE AS SUCH. THE ORDER SHALL ALSO PROVIDE THAT, IN THE EVENT THE DEFENDANT HAS NOT ABATED THE NUISANCE WITHIN THIRTY (30) DAYS AFTER THE COURT ORDER, THE CITY OR ITS AGENTS ARE AUTHORIZED TO DO SO.

(E) IN ADDITION TO ANY FINES LEVIED HEREUNDER, THE COURT SHALL IMPOSE, AS A PORTION OF THE COSTS ASSESSED AGAINST A CONVICTED RESPONSIBLE PARTY, ANY COSTS INCURRED BY THE CITY IN PROSECUTING, ENFORCING AND ABATING THE NUISANCE.

(F) EACH DAY DURING WHICH ANY RESPONSIBLE PARTY COMMITS, OR ALLOWS TO REMAIN UNABATED, ANY OF THE ACTIONS SPECIFIED AS UNLAWFUL IN THIS CODE SHALL CONSTITUTE A SEPARATE OFFENSE. MULTIPLE VIOLATIONS OF THIS CODE MAY BE INCLUDED ON A SINGLE NOTICE TO ABATE OR A SINGLE SUMMONS AND COMPLAINT.

SEC. 16-63. RECOVERY OF EXPENSE OF ABATEMENT.

(A) THE ACTUAL COSTS OF ABATEMENT, PLUS FIFTEEN PERCENT (15%) OF SUCH ABATEMENT COSTS FOR INSPECTION, A MINIMUM FEE ASSESSMENT OF ONE HUNDRED DOLLARS (\$100.00) AND OTHER INCIDENTAL COSTS OF ABATEMENT SHALL BE ASSESSED UPON THE LOT, LOTS OR TRACTS OF LAND UPON WHICH SUCH NUISANCE IS ABATED.

(B) SUCH COSTS SHALL BE PAID TO THE CITY WITHIN THIRTY (30) DAYS AFTER THE CITY HAS MAILED NOTICE OF THE ASSESSMENT BY CERTIFIED MAIL TO THE OWNER OF THE PROPERTY; PROVIDED, HOWEVER, THAT IF THE PROPERTY IS OCCUPIED BY SOMEONE OTHER THAN THE OWNER, THE CITY TREASURER SHALL MAIL SUCH NOTICE OF ASSESSMENT BY CERTIFIED MAIL, TO BOTH THE OCCUPANT AND THE OWNER. SERVICE SHALL BE COMPLETE UPON DEPOSITING THE NOTICE WITHIN THE UNITED STATES POSTAL SERVICE, POSTAGE PREPAID FOR CERTIFIED MAIL. EVERY SUCH ASSESSMENT SHALL BE A LIEN IN THE SEVERAL AMOUNTS ASSESSED AGAINST SUCH LOT, LOTS OR TRACT OF LAND UNTIL PAID.

(C) FAILURE TO PAY SUCH ASSESSMENT WITHIN SUCH PERIOD OF THIRTY (30) DAYS SHALL CAUSE SUCH ASSESSMENT TO BECOME A LIEN AGAINST SUCH LOT, BLOCK OR PARCEL OF LAND AND SHALL HAVE PRIORITY OVER ALL LIENS, EXCEPT GENERAL TAXES AND PRIOR SPECIAL ASSESSMENTS, AND THE SAME MAY BE CERTIFIED AT ANY TIME AFTER SUCH FAILURE TO SO PAY THE SAME, BY THE CITY TO THE COUNTY TREASURER TO BE PLACED UPON THE TAX LIST FOR THE CURRENT YEAR AND TO BE COLLECTED IN THE SAME MANNER AS OTHER TAXES ARE COLLECTED, WITH FIFTEEN PERCENT (15%) PENALTY TO DEFRAY THE COST OF COLLECTION.

SEC. 16.64. OTHER REMEDIES.

THE REMEDIES SET FORTH HEREIN ARE CUMULATIVE. THE INITIATION OF ANY ACTION OR THE IMPOSITION OF ANY PENALTY SHALL NOT PRECLUDE THE CITY FROM

INSTITUTING ANY OTHER PROCEEDING TO REQUIRE COMPLIANCE WITH THE PROVISIONS OF THIS CHAPTER AND WITH ANY ADMINISTRATIVE ORDERS AND DETERMINATIONS MADE HEREUNDER. NO PROVISION HEREIN SHALL BE CONSTRUED TO LIMIT THE RIGHT OF ANY PERSON TO BRING A PRIVATE ACTION TO ABATE A PRIVATE NUISANCE.

4. Enumeration of nuisances, formerly Section 16-61, is hereby renumbered as Section 16-65. This section has no other changes and reads as previously written.

5. Sections 16-62--16-80, Reserved, are now renumbered as Sections 16-66--16-80, Reserved.

6. Chapter 16, Article VII, Sections 16-141 is revised as follows:

Sec. 16-141. DEFINITIONS.

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

Notice of Violation (NOV) means a FORMAL written notice DELIVERED, EITHER BY HAND DELIVERY, CERTIFIED MAIL OR POSTED ON THE SUBJECT PROPERTY, TO A PERSON OR ENTITY WHO HAS VIOLATED ANY CODE OF THE GRAND JUNCTION CODE ORDINANCES. THE NOTICE SHALL CONTAIN THE PARCEL NUMBER OR ADDRESS, NAME OR ENTITY TO WHOM THE NOTICE IS BEING DELIVERED, SECTION(S) OF THE CODE BEING VIOLATED, TIME FRAME IN WHICH TO CORRECT THE VIOLATION AND INFORMATION REGARDING REMEDIES THE CITY MAY TAKE TO ACHIEVE COMPLIANCE. AN NOV MAY ALSO BE REFERRED TO AS A "COMPLIANCE ADVISORY".

7. Chapter 16, Article VII, Section 16-144 (B), ENFORCEMENT is revised as follows:

(B) Whenever the City finds that any person has violated any portion of this Article, the City Manager shall serve a COMPLIANCE ADVISORY OR a Notice of Violation (NOV).

Within the time specified after the date of such notice the person shall submit to the City Manager evidence of the satisfactory correction of the violation.

8. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Grand Junction, that it is promulgated for the health, safety and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

9. Effective Date. This Ordinance shall take effect on 8th day of June, 2008, as permitted by the Charter.

Introduced on first reading on the 16th day of April, 2008.

PASSED and ADOPTED on second reading this 7th day of May, 2008.

Attest:

/s/: Stephanie Tuin
City Clerk

/s/: Gregg Pamer
President of the Council