

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. 4818

AN ORDINANCE TO REPEAL CHAPTER 2.28 OF THE CITY OF GRAND JUNCTION MUNICIPAL CODE AND TO REENACT CHAPTER 2.28 DESCRIBING THE FUNCTIONS OF THE MUNICIPAL COURT

RECITALS:

Article XX, Section 6 of the Colorado Constitution provides (in relevant part) that *the people of each city ... shall have the powers ... to legislate upon, provide, regulate, conduct and control, the creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof ...* The City Charter further provides (in relevant part) that *the judge of the municipal court of the city shall have all the jurisdiction, powers, duties and limitations as provided for a municipal court by state law or by ordinance ...*

Pursuant to the authority granted by the Colorado Constitution and the City Charter, the City Council has adopted this ordinance to establish, acknowledge and affirm the necessity of the Municipal Court as a fair, independent and impartial tribunal while consistent with that authority and other applicable statutes, laws and ordinances, maintaining the court's impartiality and fostering a cooperative relationship with the executive and legislative branches of the City. With this ordinance the Council seeks to confirm the importance of the Court and the safeguarding for all parties and for the public of the Court as an evenhanded, unbiased and fair administrator of justice in the City.

The City's Municipal Code ("GJMC") presently adopts by reference Colorado law concerning many of the functions and operations of the Municipal Court, the GJMC does not fully or adequately describe the functions of the Municipal Court and its relationship with the various departments of the City. This ordinance more particularly describes the functions of the Municipal Court and amends the GJMC to fulfill the direction of the City Council for the function and performance of the Court.

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

Chapter 2.28 of the Grand Junction Municipal Code shall be repealed and reenacted. By and with the authority of Article VIII, Section 70 of the Charter of the City of Grand Junction this ordinance establishes, defines and describes the powers, duties,

limitations, operations and functions of the Municipal Court. The chapter shall read as follows:

Chapter 2.28 MUNICIPAL COURT

2.28.010. Created.

A Municipal Court in and for the City is hereby created and established pursuant to the Charter and all lawful authority of the City of Grand Junction. This Chapter supersedes and replaces C.R.S. § 13-10-101, *et seq.* in its entirety, except as otherwise set forth in C.R.S. § 13-10-103.

2.28.020. Jurisdiction.

(a) The Municipal Court shall have original jurisdiction of all charges of misdemeanor and charges of civil infractions as determined by City Council arising under the Charter, code of ordinances, resolutions, rules and regulations of the City, with full power to assess and collect penalties, punish violators, abate nuisances, enforce orders of the court by remedial or punitive contempt, compel the attendance of witnesses, and to otherwise effect the responsibilities prescribed by ordinance, Charter, administrative regulation or court rule.

(b) The Municipal Court has jurisdiction and powers of an administrative hearing officer where so provided by the ordinances or resolutions of the City.

(c) The territorial jurisdiction of the Municipal Court shall be coextensive with the corporate limits of the City, and, in addition thereto, the court shall have the original jurisdiction of all cases arising under the provisions of this code and the Charter which arise on any city-owned property outside of the City limits or arise on non-city-owned property outside the corporate limits of the City, over which the City has authority to control and regulate by virtue of any law, rule, regulation, contract, deed, easement agreement, right-of-way or other publicly-acquired interest, including but not limited to the authority granted by C.R.S. 31-15-707, as amended.

2.28.030. Court of record.

(a) For purposes of hearing cases involving persons accused of violating provisions of the Charter, the code or any other ordinance or regulation of the City, the Municipal Court is a qualified court of record and shall comply with the requirements of state law for courts of record. The Municipal Court shall furnish the record of proceedings to any party wishing to appeal from a judgment of the court, acting as a court of record, for transcription at such party's sole expense. If upon application of a party the Court determines the party is indigent, the Court shall waive the cost.

(b) There shall be a verbatim record made of the proceedings and evidence at trial in the Municipal Court by either electronic recording devices or stenographic means. The

costs of preparation of transcripts of the record made in the Municipal Court shall be as provided in courts of record.

2.28.040. Judges – vacancy - nomination committee.

(a) The Municipal Court shall be presided over and its functions exercised by one or more judges, including municipal judge(s) and substitute judge(s) designated by the City Council, in accordance with the Charter, as amended from time to time. City Council may designate divisions of the municipal court and authority of each.

(b) In the event of a vacancy in the office of any municipal judge of the Municipal Court, the City Council shall:

(1) If necessary to secure continuity in such office, appoint a/the substitute judge as an acting municipal judge, to serve until the completion of the designation process for the successor to such office. Such acting municipal judge shall have and exercise all the authority of a municipal judge.

(2) Appoint an *ad hoc* judicial nominating committee consisting of the City Attorney, a lay person residing in the City and the Chief Judge of the 21st Judicial District or the chief judge's designee being a judge presiding in the district.

(3) The committee shall promulgate necessary rules governing its procedure, review the applications and references presented and conduct oral interviews of qualified applicants. The City Manager shall provide any municipal facilities and City staff reasonably required to achieve the duties of the committee.

(4) The committee shall submit to the City Council the names of three qualified applicants or, if there are fewer than three qualified applicants, the name of each qualified applicant, along with their applications and any written communications the committee may provide to assist the City Council in the selection process. The committee may designate an order of preference in the names submitted.

(5) The City Council shall review the materials submitted by the committee and conduct such additional procedures, including interviews with the applicants referred by the committee, as the Council may deem appropriate and from the names of the applicants submitted by the committee, designate a municipal judge.

(6) The City Council may, in the public interest, defer designation of the municipal judge and reopen the selection process as set forth in this subsection.

2.28.050. Appointment and removal of Municipal Court judges

(a) The City Council shall appoint the municipal judge(s) who shall be licensed to practice law in the State of Colorado. A municipal judge and/or a substitute judge may

be removed by the City Council at any time at the sole discretion of the Council. A municipal judge shall receive compensation as established by Council by ordinance.

(b) The City Council may appoint one (1) or more substitute municipal judges who shall act when the municipal judge is unable due to temporary absence. A substitute judge shall be paid based upon the number of court sessions served by the substitute judge at a rate established by Council.

(c) Prior to taking office, a municipal judge and all substitute judge(s) shall execute an oath to well and faithfully perform the duties of municipal judge. The oath shall include but not be limited to a pledge to uphold the Constitution of the United States, the Constitution of the State of Colorado, the Charter of the City of Grand Junction and the laws and ordinances of the City.

(d) A municipal judge and/or any substitute judge may be removed by a majority of the City Council at any time with or without cause.

(e) Judicial performance commission.

(1) There is hereby created a judicial performance commission, established for the purpose of presenting evaluation(s) and recommendation(s) to Council in regard to the reappointment of Municipal Court judge(s).

(2) The judicial performance commission shall be composed of no less than three voting members up to seven voting members who shall be appointed by a majority of all members of the City Council. The judicial performance commission shall consist of at least one resident(s) of the City who is(are) not licensed attorneys, and at least two of the members shall be licensed attorneys engaged in the practice of law who are residents of the City or maintain or regularly practice law within the City. With respect to the members who are licensed attorneys, an effort shall be made to appoint one attorney whose employment relates to criminal prosecution, and one attorney whose employment relates to the defense of criminal cases. Each member of the commission shall be appointed for individual terms of four (4) years,

(3) No member shall be related by blood or marriage within the third degree to any other member or any judge being reviewed.

(4) The powers and duties of the judicial performance commission shall be as follows:

(i) No later than the first Tuesday in September of each even numbered year or as often as requested by Council, the judicial performance commission shall submit to each judge of the Municipal Court a confidential evaluation of the judge's official performance.

(ii) No later than 20 days following the submission of an evaluation in accordance with subsection (1) of this section, any judge who so desires may submit to the judicial performance commission a written response to the commission's evaluation of the judge, and such written response by the judge shall become a permanent attachment to the commission's evaluation of the judge.

(iii) No later than the first Monday in November of the year of evaluation, the judicial performance commission shall certify to the Council copies of all of the commission's evaluation of the official performance of the affected judge. The judicial performance commission's evaluations shall be accompanied by a confidential recommendation regarding the appointment of the judge to another term on the bench of the Municipal Court. The recommendation shall be stated as "reappoint," "do not reappoint," or "no opinion" and shall be accompanied by an explanation.

(iv) The evaluations and recommendations made by the judicial performance commission regarding the Municipal Court judges of the city shall be based solely upon the following criteria: integrity; knowledge and understanding of substantive, procedural, and evidentiary law; communication skills, preparation, attentiveness, and control over judicial proceedings; consistency and applicability of sentencing practices; docket management and prompt case disposition; administrative skills; punctuality; effectiveness in working with participants in the judicial process; and service to the legal profession and the public. The Colorado Judicial Code as may be amended and revised, from time to time (Judicial Code) shall be considered during the evaluation process. A violation of the Judicial Code shall be a basis for a "do not reappoint."

(v) The judicial performance commission shall develop techniques for the evaluation of judges in accordance with the criteria listed in subsection (iv) of this section. Such techniques shall include questionnaires or surveys of the attorneys who practice before the judge, including but not limited to court appointed counsel, the city attorney's office and the private defense attorneys, together with jurors, law enforcement officers, defendants, court personnel, and the municipal judge(s) of the Municipal Court (except in regard to the evaluation of the municipal judge[s]). Additional evaluation techniques may include, without being limited to, questionnaires and surveys of court personnel and others who have direct and continuing contact with Municipal Court judges, and consultations with state and 21st Judicial District court administrator(s) regarding evaluation criteria, techniques, and sources for judicial performance.

(f) Council retains the sole discretion to appoint, reappoint, and remove Municipal Court judges and/or adjust compensation following any evaluation(s). The creation of the judicial performance commission shall not in any fashion abridge the authority possessed by the City Council; the commission serves as an advisory body to the City Council and its evaluations shall be considered solely recommendations for the use and benefit of the City Council in Council's evaluation of the judge(s).

2.28.060. Authority - Duties of the municipal judge and clerk of the Municipal Court.

(a) A municipal judge shall have full power and authority to make and adopt local rules of procedure, in writing, for the Municipal Court, provided the rules are not inconsistent with those rules promulgated by the Colorado Supreme Court for Municipal Courts and any City ordinances. A municipal judge and any substitute judge shall have judicial powers over those causes arising under the Charter or any of the ordinances, laws, rules or regulations that come before the Municipal Court for deciding the outcome of the causes and the ascertainment and application of the remedy for each cause. In addition, the judge(s) shall have control and authority relating to the operation of the courtroom and administration of the causes, subject to any rules of procedure governing the operation and conduct of Municipal Courts promulgated by the Colorado Supreme Court and City ordinances.

(b) A municipal judge or a substitute judge shall retain the authority and responsibility for the promulgation and enforcement of all rules, procedures and proceedings pertaining to the Municipal Court arraignments, hearings, trials, and other procedures regarding a matter before the Municipal Court.

(c) There shall be a clerk of the Municipal Court which shall be a separate position with separate responsibilities from the Court Administrator and the Court Administrator's staff. The Municipal Court clerk position may be a shared position with the Court Administrator and his/her staff; however, the municipal judge shall establish the duties of the clerk of the Municipal Court in collaboration with the City Manager or his/her designee. The clerk of Municipal Court shall have the power to administer oaths and affirmations in all municipal matters in the court, and issue writs and notices, including subpoenas, summonses, and copies thereof in all cases coming within the jurisdiction of the Municipal Court. At the direction of the Municipal Judge, the clerk of Municipal Court shall be responsible for preparing all papers pertaining to the operations of the Court.

2.28.070. Colorado Code of Judicial Conduct Applicable to Municipal Judges.

The Colorado Code of Judicial Conduct as may be amended and revised, from time to time (Judicial Code) is applicable to and shall guide the conduct of all judges in and for the Municipal Court of the City of Grand Junction. The judges shall use the Judicial Code to guide them in achieving and maintaining the highest standards of judicial and personal conduct. The Judicial Code shall provide a basis for discipline for misconduct under the Judicial Code; misconduct that arises out of or under a violation(s) of the City personnel policies and/or conduct which the Council deems improper may be separately disciplined by the City Council.

2.28.080. Issuance of warrants and municipal holds.

(a) The municipal judge and any substitute judge shall be and are authorized to issue warrants for the inspection, search and nuisance abatement of premises or property by municipal or joint City/County officials or inspectors upon proper application. Nothing in this section shall be construed to require the issuance of a warrant for emergency inspections or in any other case where warrants are not required by law. The Municipal Court may assess costs to a defendant named in any process, writ or warrant issued by it and which process or warrant was served or executed as provided by law, including the costs of service, commitment or incarceration which are incurred by the City in connection with the service or execution of such process, writ or warrant.

(b) Every warrant shall state the name of the defendant, the code section(s) and a brief description of the ordinance alleged to have been violated, the date and place of the alleged violation, that the defendant is alleged to have committed the offense, and the amount of bond, if any.

2.28.090. Court Administrator and other staff.

(a) The City Manager shall appoint a person to serve as an administrator of the Municipal Court, and any reference in this article to "Court Administrator" shall be deemed to apply to that person. The City Manager shall appoint such other staff of the Municipal Court as may be necessary to carry out efficiently the business of the court.

(b) The City Manager and his/her designee are authorized to administer and supervise the functioning and administrative operations of the Court Administrator and all subordinate personnel of the Court Administrator's office.

(c) The Municipal Court Administrator or designee shall be present during each session of the Municipal Court. The Court Administrator shall have the following powers and duties including, but not limited to, the following:

(1) Have control, management and supervision over personnel and all matters pertaining to the business of the Municipal Court, and authority to promulgate rules and regulations pertaining to the administration of the Municipal Court.

(2) Have control, management and supervision over personnel and all matters pertaining to the administration of the violations bureau.

(3) Provide financial management and control of the Municipal Court.

(4) Keep such records and reports as specifically required by law or as deemed necessary and consult with the City Attorney regarding necessary policies or regulations to ensure their care, security, accuracy and release to the public.

(5) Record all fees, fines and penalties received and pay over such to the City Financial Director and shall make a monthly accounting of all such fees, fines and penalties collected.

(6) Prepare and keep a docket for each court session. Judgments for each case may be stored electronically and be managed by the Court Administrator in accordance with then best practices.

(7) Except when otherwise provided for by ordinance or established by Council, fees for services performed by the Municipal Court shall be promulgated by the Court Administrator. The Court Administrator shall advise Council of all fees set pursuant to this section.

(8) The Court Administrator is authorized to assign for collection to any agency or agencies authorized to do business in the State of Colorado, any fines, fees, costs and surcharges which may have been assessed by the Municipal Court and which are unpaid to the city and are delinquent.

(9) Management of the Municipal Court facility including, but not limited to, security, temporary closures for public safety reasons, weather, loss of utilities, or any other emergency.

(10) The Municipal Court Administrator shall keep a register of the actions in such court, including all fees and money collected and an index thereof.

2.28.100. Violations bureau.

(a) There is established a violations bureau for the handling of violations of applicable sections of this code, ordinances and regulations of the city or parts thereof, wherein Council has authorized that penalty assessments may be prescribed. Any person who has receives any notice to appear and answer to a charge of violating any such applicable sections of this code, ordinances or regulations of the City which indicates a penalty assessment may, within the time specified in the notice of such charge, answer at the violations bureau to the charge(s) set forth in such notice by paying the penalty assessment, pleading guilty in writing to the charge(s), waiving a hearing in court and giving power of attorney to make such a plea and pay such fine in court. Delivery of the penalty assessment to the violations bureau shall be deemed acknowledgement of conviction of the alleged offense(s). Acceptance of the prescribed penalty assessment by the Court Administrator shall be deemed to be complete satisfaction for the violation. No person shall be deprived of a full and impartial hearing in court or by a jury, if otherwise entitled to a jury under this chapter or other applicable law.

(b) The Court Administrator shall establish the procedures by which a person may answer a charge of violation of a City ordinance by paying a penalty assessment, pleading guilty in writing, and waiving a hearing.

(c) The court may enter and issue an outstanding judgment warrant (OJW) against a person charged with a traffic infraction who fails to plead guilty to the offense in accordance with subsection (a) of this section and who fails to appear in the Municipal

Court to answer such charge on the date and time listed on the complaint or summons and complaint, or on the date and time such person is scheduled to appear, or for failure to comply with a court order.

(d) The penalty assessment amount shall be that established by the Council by ordinance or otherwise, or if not set by the Council then as established by the municipal judge and the schedule is then posted in a conspicuous place at the violations bureau. Traffic offenses included in the schedule for the offenses for which a penalty assessment may be issued are traffic infractions and constitute a civil matter. Penalty assessments may also be set for traffic misdemeanors if included in the fine schedule set by the municipal judge, except for reckless driving, exceeding the speed limit by more than 24 miles per hour, exhibition of speed or speed contest, and those offenses resulting in an accident causing personal injury, death, or appreciable damage to the property of another.

(e) In any action in which the commission of a penalty assessment, including but not limited to traffic infraction(s) or other civil infraction(s), and a criminal violation of this code are charged in one complaint or summons and complaint, all charges shall be returnable and the action shall be treated as one proceeding governed by the rules, statutes and ordinances applicable to municipal violations which are not penalty assessments.

(f) The fee for the OJW entered pursuant to subsection (c) shall be in an amount determined by the State of Colorado.

(g) The court shall forward the record of such judgment entered in accordance with subsection (a), including points assessed, to the Colorado Division of Motor Vehicles, pursuant to C.R.S. §§ 42-2-127(6)(a), 42-4-1709, and 42-4-1710 as amended.

2.28.110. Initiation of prosecutions - summons and complaint.

(a) The initiation of prosecutions in the Municipal Court, including the issuance of a complaint or summons and complaint, shall be in accordance with the Colorado Municipal Court Rules of Procedure (Colorado Rules). Violations of this code for which imprisonment is not a possible penalty and that are not criminal shall follow the Colorado Rules in all such cases unless those rules are clearly inapplicable.

(b) A complaint or any other action for the violation of any of the provisions of this code shall be brought in the name of "The City of Grand Junction by and on behalf of the People of the State of Colorado" as plaintiff against the person who is alleged to have violated the ordinance as defendant and shall be commenced in the manner provided by law.

(c) A complaint must require the person named as the defendant in such summons and complaint to appear in Municipal Court at a date and time certain to answer the charges of the violation.

(d) Any complaint or summons and complaint may be issued as provided in the Colorado Rules. The word "issued" shall be defined as preparation of the summons or summons and complaint by the City Attorney or any peace officer. For purposes of this code, the term "peace officer" shall include the employees and or agents of the City designated by the City Manager as peace officers empowered to initiate a prosecution. Those designated persons, however titled, shall have such enforcement powers without regard to the certification requirements of C.R.S. § 24-31-301, *et seq.* The designated persons are further authorized to issue and/or serve a summons and complaint for any violation of this code in any matter for which probable cause exists that the alleged violation has occurred by the individual being served.

2.28.120. Civil infractions including but not limited to traffic infractions.

In any action where only civil infraction(s), including but not limited to traffic infraction(s), are alleged no jury trial is allowed and no attorney shall be appointed for the defendant, except in those instances where there is a counterpart state law which is criminal and/or punishable by imprisonment. If the City Attorney does not appear, then the officer shall offer sworn testimony to the facts concerning the alleged infraction. The defendant may then offer sworn testimony and evidence and shall answer questions, if such testimony is offered, as may be asked by the court. If the testimony of additional witnesses is offered by either side, the order of testimony and extent of questioning shall be within the discretion of the court. Upon the conclusion of such testimony and examination, the court may further examine or allow examination and rebuttal testimony and evidence as deemed appropriate. At the conclusion of all testimony and examination, the defendant or counsel shall be permitted to make a closing statement. The Colorado Rules of Evidence shall not apply in such actions. If all elements of a civil infraction are proven beyond a reasonable doubt, the court shall find the defendant guilty and enter appropriate judgment. If any element of a civil infraction is not proven beyond a reasonable doubt, the court shall dismiss the charge and enter appropriate judgment, provided, however, that the court may find the defendant guilty of a lesser included civil and/or traffic infraction, if based on the evidence offered, and enter appropriate judgment. If a defendant fails to appear for an arraignment or a trial for a civil infraction that does not have a counterpart state law which is criminal and/or punishable by imprisonment, then the court shall issue a default judgment for the charge(s). Appeal procedures shall be in accordance with Colorado Criminal Procedure Rule 37.

2.28.130. Court-appointed counsel.

(a) Any person charged before the Municipal Court who is indigent and unable to obtain legal counsel and who could be incarcerated if convicted of one or more of the violations with which charged may petition, in writing, to the court for court-appointed counsel. The City Attorney may, at any time during the prosecution, state in writing whether or not he or she will seek incarceration as part of the penalty upon conviction of an offense for which the defendant has been charged. If the City Attorney does not seek incarceration as part of such penalty, legal representation and supporting services need

not thereafter be provided for the defendant at City expense, and no such defendant shall be incarcerated if found guilty of the charge(s).

(b) Court-appointed defense counsel shall be compensated through funds made available by the City Council at the hourly rate established by the State judicial system for court-appointed counsel.

Court-appointed counsel shall only be appointed after petition by the defendant accompanied by a written sworn financial statement with the applicant attesting to the truthfulness of the information which must be sufficient to adequately advise the court that the defendant is financially unable to obtain counsel. The municipal judge shall promulgate indigent standards in writing for those desiring court-appointed counsel. The Court Administrator shall administer the process of the appointment of counsel for indigents.

(d) It shall be a misdemeanor for any person to give false information on an application for court-appointed counsel, and upon conviction of a violation, shall be punished as provided in section 1.04.090 of this code.

2.28.140. Prosecuting attorney.

(a) The City Attorney, and/or an attorney(s) appointed by the City Attorney, shall have the sole and exclusive responsibility of prosecuting all charges filed in the Municipal Court, except as set forth in section 2.28.120.

(b) To facilitate and encourage diversion of defendants from the criminal justice system when diversion may prevent defendants from committing additional criminal acts, facilitate the defendant's ability to pay restitution to victims of crime, and reduce the number of cases in the Municipal Court the City Attorney's office may operate its own diversion program.

(c) Pretrial diversion:

(1) In any case, either before or after charges are filed, the City Attorney may suspend prosecution of the offense for a period not to exceed one year.

(2) The City Attorney may agree to diversion in any case in which there exists sufficient admissible evidence to support a conviction. In determining whether an individual is appropriate for diversion, the following shall be considered:

- (i) The nature of the crime charged and the circumstances surrounding it;
- (ii) Any special characteristics or circumstances of the defendant;
- (iii) Whether diversion is consistent with the defendant's rehabilitation and reintegration; and
- (iv) Whether the public interest will be best served by diverting the individual from prosecution.

(3) Before entering into a pretrial diversion agreement, the City Attorney may require a defendant to provide information regarding prior criminal charges, education and work experience, family, residence in the community, and other information relating to the diversion program. The defendant shall not be denied the opportunity to consult with legal counsel before consenting to diversion.

(4) Diversion agreements:

(i) All pretrial diversions shall be governed by the terms of an individualized diversion agreement signed by the defendant, the defendant's attorney if the defendant is represented by an attorney, a parent or legal guardian of the defendant if the defendant is a juvenile, and the City Attorney.

(ii) The diversion agreement shall include a written waiver of the right to a speedy trial for the period of the diversion plus the reasonable time for prosecution to be initiated once the City Attorney has determined the defendant is in default of the terms of the agreement. Upon consenting to a deferred prosecution as provided in this section, the defendant shall be deemed to waive his right to a speedy trial even if the agreement does not include a written waiver. All diversion agreements shall include a condition that the defendant not commit any criminal offense during the period of the agreement and any other conditions determined appropriate including but not limited to any penalty/requirement, except incarceration, that the municipal court could order as a possible sentence or as a part of probation, by the City Attorney and the defendant, and the defendant's parent or legal guardian of the defendant if the defendant is a juvenile. Diversion agreements may include provisions concerning payment of restitution and a diversion fee as set by City Council.

(iii) The diversion agreement may include a statement of the facts the charge is based upon as agreed to by the defendant, the defendant's attorney if represented, and the defendant's parent or legal guardian if the defendant is a juvenile. The statement is admissible as impeachment evidence against the defendant in the criminal proceedings if the defendant fails to fulfill the terms of the diversion agreement and criminal proceedings are resumed.

(iv) If the City Attorney agrees to offer diversion in lieu of further criminal proceedings and the defendant agrees to all the terms of the agreement and charge(s) are pending in the court, then the court shall be informed in writing of the agreement and all further court proceedings shall be stayed. The agreement shall not be filed with the court, except if the defendant violates a term of the agreement, then the defendant or the City Attorney may file the agreement or portion(s) of the agreement as determined necessary by the defendant or the City Attorney during the hearing of the revocation of the diversion agreement if there is a hearing.

(5) Upon the defendant's satisfactory completion of the terms of the diversion agreement, no further criminal proceedings on the original charges shall proceed. If charge(s) are pending, the City Attorney shall inform the court in writing and the charge(s) shall be dismissed by the court.

(6) If the defendant violates the conditions of the diversion agreement, the City Attorney shall provide written notice of the violation to the defendant. The City Attorney, in his or her sole discretion, may initiate revocation of a diversion agreement by the filing of a criminal complaint or if charge(s) are still pending by giving the court written notice of intent to proceed with prosecution. The defendant may, within fourteen days after the first court appearance following such a filing, request a hearing to contest whether a violation occurred. The City Attorney has the burden by a preponderance of the evidence to show that a violation has in fact occurred. If the court finds a violation has occurred, or a hearing is not requested, the prosecution may continue. If the court finds the City Attorney has not proven a violation, the court shall dismiss the criminal case without prejudice and return the defendant to the City Attorney for supervision of the defendant until defendant successfully completes the terms of the agreement.

(7) If a defendant is prosecuted following a violation of a diversion agreement, a factual statement included within the diversion agreement is admissible as impeachment evidence. Any other information concerning diversion, including participation in the diversion agreement, including an evaluation performed pursuant to the terms of a diversion agreement, or statements made to treatment providers during the diversion, shall not be admitted into evidence at trial for any purpose.

(d) Plea discussions and plea agreements:

(1) Where it appears that the effective administration of criminal justice will be served, the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement. The prosecuting attorney should engage in plea discussions or reach plea agreements with the defendant only through or in the presence of defense counsel, except where the defendant has refused or is not otherwise eligible for appointment of counsel and has not retained counsel, and in the presence of a parent or legal guardian if the defendant is a juvenile.

(2) In plea agreements, the prosecuting attorney may agree to diversion or deferred sentencing. Pursuant to a plea agreement, the prosecuting attorney may agree to make or not to oppose favorable recommendations concerning the sentence to be imposed, may agree to dismiss a charge or not to prosecute other potential charges, and/or consent to deferred sentencing if the defendant enters a plea of guilty or no contest.

(3) The trial judge shall not participate in plea negotiations.

(4) When a plea of guilty or no contest is tendered or received as a result of a plea agreement, the trial judge should give the agreement due consideration, but, notwithstanding its existence, the trial judge should reach an independent decision on whether to accept charge or sentence concessions as contained in the plea agreement.

2.28.150. Sentencing.

(a) The court shall not exceed the fine or incarceration limitations established by ordinance. Any person convicted of violating a municipal ordinance may be fined and incarcerated in accordance with section 1.04.090 of this code or as otherwise specified in the appropriate code section for each violation. Any other provision of the law to the contrary notwithstanding, the court may suspend all or any portion of the sentence or fine of any violator and place the defendant on probation for a period not to exceed one year.

(b) The court is empowered to assess costs, as set forth in section 2.28.160 against any defendant who pleads guilty or nolo contendere or who enters into a plea agreement or who, after trial, is found guilty of an ordinance violation.

(c) Notwithstanding any provision of law to the contrary, the court has the authority to order a child under eighteen years of age confined in a juvenile detention facility operated or contracted by the department of human services or a temporary holding facility operated by or under contract with the City for failure to comply with a lawful order of the court. Any confinement of a child for contempt of Municipal Court shall not exceed 48 hours.

(d) Notwithstanding any other provision of law, a child, as defined in section 19-1-103 (18), C.R.S. and as amended, arrested for an alleged violation of this code, convicted of violating this code or probation conditions imposed by the court, or found in contempt of court in connection with a violation or alleged violation of this code shall not be confined in a jail, lockup, or other place used for the confinement of adult offenders but may be held in a juvenile detention facility operated by or under contract with the department of human services or a temporary holding facility operated by or under contract with the City that shall receive and provide care for such child. The court may impose penalties for violation of probation conditions imposed by such court or for contempt of court in connection with a violation or alleged violation of the code may confine a child pursuant to section 19-2-508, C.R.S., for up to 48 hours in a juvenile detention facility operated by or under contract with the department of human services.

(e) Whenever the court imposes a fine for a violation of this code, if the person who committed the offense is unable to pay the fine or any costs at the time the court enters its order in the matter, or the defendant fails to pay any fine or costs imposed for the commission of such offense, in order to guarantee the payment of such fine or costs, the court may compel collection of the fine in the manner provided in section 18-1.3-506, C.R.S. and as amended.

(f) Pursuant to the federal act, as defined in section 25-8-103(8), C.R.S., the court may provide such relief and impose such penalties as are required by such federal act and its implementing regulations for such programs.

(g) Deferred sentencing:

(1) In any case in which the defendant has entered a plea of guilty or nolo contendere, the court accepting the plea has the power, with the written consent of the defendant, the defendant's attorney of record, the defendant's parent or legal guardian if the defendant is a juvenile and the City Attorney, to continue the case for the purpose of entering judgment and sentence upon the plea of guilty or nolo contendere for a period not to exceed one year for a misdemeanor or traffic offense. The period shall begin to run from the date that the court continues the case.

(2) Prior to entry of a plea of guilty or nolo contendere to be followed by deferred judgment and sentence, the City Attorney, in the course of plea discussions is authorized to enter into a written stipulation, to be signed by the defendant, the defendant's attorney of record, the defendant's parent and/or legal guardian if the defendant is a juvenile and the City Attorney, under which the defendant is obligated to adhere to such stipulation.

(3) The conditions imposed in the stipulation shall be similar in all respects to conditions permitted as part of probation. In addition, the stipulation may require the defendant to perform community or charitable work service projects or make donations thereto. Upon full compliance with such conditions by the defendant, the plea(s) previously entered shall be withdrawn and the charge(s) upon which the judgment and sentence of the court was deferred shall be dismissed with prejudice.

(4) The stipulation shall specifically provide that, upon a breach by the defendant of any condition regulating the conduct of the defendant, the court shall enter judgment and impose sentence upon the previously entered plea(s).

(5) When, as a condition of the deferred sentence, the court orders the defendant to make restitution, evidence of failure to pay the restitution shall constitute prima facie evidence of a violation.

(6) Application for entry of judgment and imposition of sentence may be made by the City Attorney at any time within the term of the deferred judgment or within thirty-five days thereafter. Whether a breach of condition has occurred shall be determined by the court without a jury upon application of the City Attorney and upon notice of hearing thereon of not less than seven days to the defendant. The burden of proof at the hearing shall be by a preponderance of the evidence, except when the condition violated is a new violation which shall be proven beyond a reasonable doubt. The procedural safeguards required in a revocation of probation hearing shall apply.

(7) When a defendant signs a stipulation by which it is provided that judgment and sentence shall be deferred for a time certain, he or she thereby waives all rights to a speedy trial.

(8) A warrant for the arrest of any defendant for breach of a condition of a deferred sentence may be issued by the court upon the verified complaint of any person, establishing to the satisfaction of the court probable cause to believe that a condition of the deferred sentence has been violated and that the arrest of the defendant is reasonably necessary.

2.28.160. Costs assessed and surcharges.

(a) In any matter as to which the Municipal Court has jurisdiction, the municipal judge and any substitute judge(s) may assess, impose and levy against any defendant who pleads guilty or nolo contendere or who enters into a plea agreement or who, after trial, is found guilty of an ordinance violation the following costs, fees and surcharges (collectively referred to as "Court costs" or "costs") as appropriate and in the interest of justice.

(b) The Court Administrator shall prepare and maintain a schedule of court costs. If court costs are assessed, the costs shall be assessed according to the schedule.

(c) The court may assess costs as follows against any defendant:

(1) Who is convicted of an offense.

(2) Who fails to appear for a scheduled arraignment, hearing or trial.

(3) Who is held in contempt of court.

(4) Who accepts a deferred judgment or deferred prosecution.

(d) The court may assess costs against any properly subpoenaed witness whose failure to appear at trial necessitates a continuance of the trial or a dismissal of the charges.

(e) The judges shall be empowered to assess court costs, costs of prosecution, jury fees, witness fees, and any other costs reasonably associated with a matter. The Court Administrator shall also supervise the payment of the fees to the jurors and witnesses by the Clerk of the Municipal Court. Such costs, fees, and surcharges may be set by City Council by resolution or by ordinance.

(f) Where any person, association, or corporation is convicted of an offense, the court shall give judgment in favor of the City of Grand Junction and against the defendant and if the defendant is a juvenile against the juvenile's parent(s) or legal guardian for the

amount of the costs of prosecution, the amount of the cost of care, and any fine imposed. Such judgments shall be enforceable in the same manner as are civil judgments.

- (g) The court costs may include, but are not limited to:
- (1) Any docket fee, surcharge or assessment established by standing order of the Court.
 - (2) All jury fees, including juror fees. if applicable.
 - (3) Any costs incurred of a law enforcement agency.
 - (4) Any fees of the court reporter for all or any part of a transcript necessarily obtained for use in the case.
 - (5) The actual costs paid to any expert witness for the City.
 - (6) The witness fees and mileage paid:
 - (i) For any person required to travel more than fifty miles from the person's place of residence to the place specified in the subpoena:
 - (ii) Actual lodging expenses incurred; and
 - (iii) Actual rental car, taxi, or other transportation costs incurred;
 - (7) If a person under eighteen years of age is required to appear, the amount that a parent or guardian of the person paid for transportation and lodging expenses incurred while accompanying the person.
 - (8) Any fees for exemplification and copies of papers necessarily obtained for use in the case.
 - (9) Any fees for interpreters required during court appearances, depositions, status conferences, during hearings/trials and/or related proceedings.
 - (10) On proper motion of the prosecuting attorney and at the discretion of the court, any other reasonable and necessary costs incurred by the prosecuting attorney or the Grand Junction Police Department that are directly the result of the successful prosecution of the defendant including the costs resulting from the collection and analysis of any chemical test.
 - (11) Any costs incurred by a law enforcement agency in photocopying reports, developing film, and purchasing videotape as necessary for use in the case.

(12) Any costs of participation in a diversion program if the offender unsuccessfully participated in a diversion program prior to the conviction or adjudication.

(13) Where any person is sentenced to a term of incarceration, the court shall order such person to make such payments toward the cost of care as are appropriate under the circumstances. "Cost of care" shall mean the cost to the department and/or City for providing room, board, clothing, medical care, and other normal living expenses for an offender confined to a jail or correctional facility, or any costs associated with maintaining an offender in a home detention program.

(14) Cost of insurance for useful public service. The City shall determine whether separately or by or through a separate agency and the defendant shall pay for the cost of insurance when ordered as required as part of sentencing by a judge to perform useful public service.

(15) Surcharges established by resolution or ordinance of the City Council.

(16) The fees and costs authorized hereby may be increased by adoption of a resolution by a majority of the City Council then considering the same. Increases may be at a rate and frequency as determined proper by the City Council considering the same.

2.28.170 Jury trials.

(a) In all trials before the Municipal Court in cases arising under this code, trial shall be to the court, unless the defendant is entitled to a jury trial under the Constitution of the State or of the United States, general laws of the State, or the Charter or this code or ordinances of the City, in which case the defendant shall have a jury if, within 21 days after entry of a plea, the defendant files with the court a written jury demand and tenders to the court a jury fee in an amount set forth by resolution of the City Council, unless the fee is waived by the court because of the indigency of the defendant. A defendant who fails to file with the court the written jury demand, as provided in this section, waives the right to a jury trial. When a jury trial is granted, the jury shall consist of three jurors unless a greater number, not to exceed six, is requested by the defendant in the jury demand.

(b) The jury commissioner of the Municipal Court shall be the Court Administrator. The Court Administrator may designate deputy jury commissioner(s) who shall have the same powers as the jury commissioner when the jury commissioner is absent.

(c) The City Clerk and the City Clerk's staff shall give the jury commissioner access to all books, records and papers in their respective offices and shall render all assistance within their power to enable the jury commissioner to procure the names of all persons in the City qualified to serve as jurors.

(d) Qualifications and exemptions of jurors shall be the same as provided in C.R.S. §§ 13-71-105 and 13-71-119 and as amended.

(e) A jury summons shall be served by the jury commissioner and shall be either personally served to the usual place of abode or post office box of the prospective juror. Service is also valid if the juror named has signed a waiver of personal service. The jury summons shall be served at least five days before the day on which the jurors are required to appear; provided, however, that the judge of the Municipal Court may, in the judge's discretion, order the jury commissioner to certify a list to the Chief of Police for personal service to be made by a police officer or an officer of the City. The failure to return undelivered mail by the post office shall be prima facie evidence of service of the summons upon the juror named in the summons.

(f) The Municipal Court has the power to cause a jury to be summoned by open venire as is provided by law.

(g) Jurors shall be paid a sum per day for actual jury service and a sum for each day of service on the jury panel alone as determined by City Council by resolution.

2.28.180. Complicity - Legal accountability as principal.

(a) A person is legally accountable as a principal for the behavior of another constituting a violation of this code if, with intent to promote or facilitate the commission of such offense, that person aids, abets, advises, counsels or directs the other person in planning or committing the offense.

(b) It shall be an affirmative defense to a charge against a defendant based on accountability through complicity if, prior to the commission of the violation, the defendant terminated effort to promote or facilitate its commission and either gave timely warning to law enforcement authorities or gave timely warning to the intended victim.

2.28.190. Attempt.

(a) A person may be charged and/or convicted with an attempted violation if, acting with the kind of culpability otherwise required for the commission of a violation under this code, that person 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) A person who engages in conduct intending to aid another to commit an offense commits criminal attempt if the conduct would establish complicity under section

2.28.180 were the offense committed by the other person, even if the other is not guilty of committing or attempting the offense.

(c) It is an affirmative defense to a charge under this section that the defendant abandoned effort to commit the crime or otherwise prevented its commission, under circumstances manifesting the complete and voluntary renunciation of criminal intent. Renunciation and abandonment are not voluntary and complete so as to be a defense to prosecution under this section if they are motivated in whole or in part by:

i. A belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another or which makes more difficult the consummation of the crime; or

(2) A decision to postpone the crime until another time or to substitute another victim or another but similar objective.

(d) A person found guilty of an attempted violation shall be punished upon conviction with the same penalties applicable to the principal offense.

Introduced on first reading the 5th day of September, 2018 and ordered published in pamphlet form.

Adopted on second reading this 5th day of December, 2018 and ordered published in pamphlet form.

ATTEST:

W Wukelmanns

City Clerk

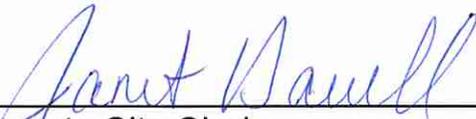
Barbara Taylor Smith
President of the Council



I HEREBY CERTIFY THAT the foregoing Ordinance, being Ordinance No. 4818 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 5th day of September, 2018 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 5th day of December, 2018, at which Ordinance No. 4818 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 12th day of December, 2018.



Deputy City Clerk

Published: September 07, 2018
Published: December 07, 2018
Effective: January 06, 2019