

**AMENDED  
ORDINANCE 0-2010-6**

AN ORDINANCE AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES OF THE CITY OF DURANGO OBLIGATING PROPERTY OWNERS TO KEEP THEIR PROPERTY FREE OF REFUSE, RUBBISH, GARBAGE, TRASH OR SOLID WASTE, PRESCRIBING PENALTIES FOR VIOLATIONS, INCLUDING RESTRICTIONS ON THE MANNER OF STORAGE AND TIME OF PLACEMENT OF TRASH CONTAINERS PLACED OUT FOR COLLECTION, ESTABLISHING A PROCEDURE FOR APPEALS OF CITATIONS ISSUED BY THE CITY; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, there is substantial evidence that the great majority of wildlife conflicts within the City are a direct result of wildlife access to trash and garbage within residential and commercial areas; and

WHEREAS, the City has obtained wildlife-resistant refuse containers and has made such containers available to the public; and

WHEREAS, existing ordinances within Chapter 10 of the Code of Ordinances of the City of Durango do not directly address the issues necessary to minimize wildlife conflicts within the City; and

WHEREAS, recommendation has been made to the City Council that new regulatory provisions be adopted to obligate property owners to keep their respective properties clear of refuse, rubbish, garbage, trash or solid waste; to allow for the regulation of the manner of storage and of hours when trash, garbage and refuse may be placed out for collection by property owners who have incurred previous violations, to provide inducements for residents of the City to utilize wildlife-resistant refuse containers; to provide penalties for violations, and to provide an appeal process available to those that have received citations; and

WHEREAS, public hearing has heretofore been held before the City Council, and the Council has determined, subsequent to said public hearing, that the adoption of the proposed amendments and additions to Chapter 10 of the Code of Ordinances of the City of Durango would be in the best interests of the citizens of the City of Durango;

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

**Section 1.** That §10-1 of Chapter 10 of the Code of Ordinances of the City of Durango should be and the same is hereby amended through the addition of the following definitions:

*Premises* means any property located within the city limits of the City of Durango that is owned, occupied, leased or used for residential or commercial purposes.

*Person* means any individual, resident or occupant of a Premises or a firm, corporation or organization under circumstances where a group of individuals, residents or occupants appoints or has appointed such firm, corporation, or organization to assume the responsibility for collecting or accumulating for that group all trash, refuse and rubbish for pick-up by a commercial waste hauler for delivery to an authorized depository or landfill. The terms Person shall not include any commercial waste haulers.

*Wildlife* means any undomesticated or unrestrained animal, including but not limited to elk, deer, sheep, lynx, bears, skunks, squirrels, raccoons, magpies, crows, coyotes, bobcats, foxes, mountain lions, unrestrained livestock, or unrestrained household pets.

*Wildlife Disturbance* means an incident in which some animal or species herein defined as Wildlife upsets, knocks over, enters or otherwise disturbs a trash, rubbish or refuse container such that any trash, refuse or rubbish contained in the container is removed or falls out of the container and becomes scattered or spread across the area in the immediate vicinity of the container, thereby threatening the public's health, safety and welfare.

*Wildlife-Resistant Refuse Container (WRRC)* means a fully enclosed container which can be constructed of pliable materials, but must be reinforced to deter access by wildlife. The enclosure must meet the site development standards of the City's Land Use and Development Code, as may be amended from time to time. The container must employ a sturdy pliable lid that has a latching mechanism to prevent access to its contents by wildlife.

*Wildlife-Resistant Dumpster Enclosure (WRDE)* a fully enclosed structure consisting of either four sides and a roof or cover or four sides of sufficient height, design and construction to prevent access by wildlife. WRDEs must meet the standards of testing by the Living with Wildlife Foundation. The door or cover must have a latching mechanism sufficient to prevent entry by wildlife. The sides of the structure must extend to within two inches of the ground, and ventilation openings must be covered with a heavy gauge steel mesh or other material of sufficient strength to prevent access by wildlife. Mesh openings shall not exceed one-quarter inch in width. The door or cover to the WRDE may be removed from December 1 through March 1.

**Section 2.** That §10-47 of Chapter 10 of the Code of Ordinances of the City of Durango should be and the same is hereby amended, in its entirety, to read as follows:

**Sec. 10-47.** Statement of Purpose, methods and location of placement.

(a) Trash, garbage and refuse containers should be secured or stored in such a manner as to prevent wildlife from accessing the contents of such containers. It is the intent of this section to encourage the proper storage of trash, refuse and garbage for purposes of minimizing conflicts between wildlife and citizens of the city. The provisions of this section shall apply to all owners, occupants and other persons in charge of premises in the city and receiving city services.

(b) Containers shall be placed out for collection at the edge of the right-of-way of a street or alley. Such placement shall not be within any fenced or enclosed area. Wildlife-Resistant Refuse Containers shall be unlatched when placed out for collection. If the City Manager or his designee finds that service from a right-of-way is dangerous or otherwise not feasible, he may notify the owner or occupant of the premises in question of the dangerous condition and shall specify within such notification the location to be utilized for the placement of a container for collection purposes. Waste containers shall be placed so as to leave a four (4) foot clearance around the container for safe pickup. The designated pickup days shall be determined by the City Manager or his designee.

(c) No container shall be permanently stored in the public right-of-way without approval from the City Manager or his designee.

(d) The location of commercial containers which are serviced on private property must be approved by the City Manager or his designee.

(e) Solid waste bags, cans and containers shall at all times be kept in such a manner as to preclude the scattering of garbage, trash and solid waste. If such spilling or scattering does occur, it shall be the immediate responsibility of the owner or occupant to remove and properly dispose of such spillage.

(f) Upon request, the city may provide bulk pickup service to residents within the city for purposes of collecting such items as discarded furniture, appliances or other large items not suitable for normal collection. Persons requesting such bulk collection service shall be notified by the City Manager or his designee of the date upon which such collection shall occur. Items for collection shall be placed at curbside no earlier than 12:00 noon of the day preceding the scheduled collection date. A reasonable fee will be assessed for bulk collection service by the city pursuant to resolution adopted by the city council.

(g) Failure to comply with the regulations of this §10-47 pertaining to the time and manner of placement and storage of trash containers may result in the scattering of refuse, rubbish, garbage or trash by wildlife, which is prohibited by §10-48 of this Code, and which subjects the owner or occupant of the premises to fines and penalties set forth within said §10-48.

**Section 3** That Chapter 10 of the Code of Ordinances of the City of Durango should be and the same is hereby amended through the adoption of a new §10-48, which reads, in its entirety, as follows:

**Sec. 10-48. Obligation to keep property free of refuse, rubbish, garbage, trash or solid waste; determination of violation; notice to abate.**

(a) It is unlawful for the owner or occupant of any property within the City to fail to keep such property free of refuse, rubbish, garbage, trash or solid waste. For purposes of this section, the term "property" includes adjacent private property or public right-of-way if the refuse, rubbish, garbage, trash or solid waste has been scattered to such locations from a trash container on the subject property. Whenever the city manager or his designee shall be informed or otherwise determine that any premises or property within the city is covered or partially covered with refuse, rubbish, garbage, trash or solid waste or reflects the scattering thereof on such property, he shall cause an investigation to be made into the spilling or scattering of refuse and shall make findings with reference to such investigation. If, as a result of such investigation, it is found that the condition of the property violates the provisions of this §10-48, the owner, or occupant of the

property if the property is not occupied by the owner, shall be subject to the following procedures and penalties:

- (1) **First Violation.** The first violation of this §10-48 shall result in the issuance of an initial notice of violation as a courtesy. In addition, the property owner or occupant shall be required to comply with the following requirements:
  - a. A requirement that garbage, trash or refuse at the offending address must be secured and stored in a wildlife-resistant refuse container, or stored in an enclosed area, approved by the city manager, or his designee, sufficient to prevent wildlife from accessing the garbage, trash or refuse through November 15<sup>th</sup> of the year in which the violation occurred.
  - b. A requirement that garbage, trash, or refuse at the offending address not be placed out for collection except on the day of collection through November 15<sup>th</sup> of the year in which the violation occurred.

Failure to correct the initial violation within a reasonable time, not to exceed 24 hours, constitutes a continuing violation and shall be grounds for the issuance of a subsequent citation for a violation of this section. The owner or occupant of the property shall be deemed to have been issued an appropriate notice of violation or citation if such notice or citation is personally served upon the owner and/or occupant, or placed in the U.S. Mail, postage prepaid and addressed to the occupant at property address and to the property owner, if the property owner is not the occupant, at the last known address given to any City of Durango or La Plata County government department.

- (2) **Subsequent Violations.** Offenders who continue to violate this section or fail to achieve timely compliance as set forth in any previous notice of violation or citation shall be guilty of a class 2 petty offense and shall be subject to a graduated fine schedule as set forth below.
  - a. A second violation of this section shall result in the imposition of a fine of \$50.00.
  - b. A third or subsequent violation of this section shall result in the imposition of a fine of \$100.00 for each such violation.

- (3) **Abatement by city; recovery of costs.** If the owner or occupant of the subject property fails to comply in a timely manner with the orders and directives of a notice of violation or citation, or, in those instances where the owner/occupant of the subject property cannot be found after the exercise of reasonable diligence, the city shall remove such refuse, rubbish, garbage, trash, or solid waste from the property or otherwise remedy the condition of the property found to constitute a violation of this §10-48. The actual cost of such removal or remedial action shall be billed to the owner of the property, together with an administrative charge of not less than \$25.00 to cover administrative costs of effecting compliance. If the property owner fails to reimburse the city for the cost of such removal or remediation within thirty (30) days of the billing thereof, such costs, together with the administrative charge, shall be certified by the city to the county assessor as an assessment against the property and shall be collected in the same manner as other city taxes are collected.

**Section 4.** That Chapter 10 of the Code of Ordinances of the City of Durango should be and the same is hereby amended through the adoption of a new §10-49, which reads, in its entirety, as follows:

**Sec. 10-49. Feeding of wildlife.**

(a) No person shall knowingly leave or store any refuse, food product, pet food, grain, seeds or salt in a manner which would constitute a lure, attraction or enticement to wildlife, except for birdfeeders.

(b) A violation of this section shall be punishable by a fine of not less than one hundred dollars (\$100.00) for the first violation. Second and subsequent violations of this section shall be punishable by a fine of not less than two hundred dollars (\$200.00) and not more than three hundred dollars (\$300.00).

**Section 5.** That Chapter 10 of the Code of Ordinances of the City of Durango should be and the same is hereby amended through the adoption of a new §10-50, which reads, in its entirety, as follows:

**Sec. 10-50. Appeal of citations; procedures.**

(a) The city council finds that the enforcement of the Code of Ordinances of the City of Durango is an important public service, and that code enforcement is vital to the protection of the public health, safety and quality of life. The purpose of this section is to encourage prompt compliance with the code and prompt payment of any penalties assessed.

(b) Any person served with a citation for violation of §10-48 or §10-49 of this Chapter may file a notice of appeal with the city manager. Such notice of appeal may be filed in person or by U.S. mail. The notice of appeal must be filed or postmarked within five (5) business days of the date the citation was served on the appealing party. Compliance with this time limit shall be a jurisdictional prerequisite to any appeal brought under this section and a failure to comply with such time limit shall constitute an irrevocable waiver of any rights of appeal granted pursuant to this section, provided that proper notice of the citation has been provided.

(c) The notice of appeal shall be made in writing, filed with the city manager, and contain at least the following information:

- (1) The reasons the appealing party believes the citation is incorrect, objectionable or illegal;
- (2) The amount and type of claim or dispute involved, and the time during which it occurred;
- (3) The name, address and telephone number of the appealing party;
- (4) If the appealing party is to be represented by a third party, the name, address and telephone number of such representative; and
- (5) The signature of the appealing party, legal representative or corporate agent.

If the city manager, or his designee, determines that the notice of appeal fails to meet one or more of the foregoing criteria, he shall promptly return the appeal and notify the appealing party of the requirement or requirements that have not been met.

(d) As soon as practicable after a completed notice of appeal has been received, the city manager shall appoint a hearing officer who shall schedule a date, time and

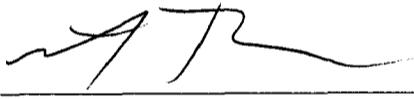
location for the appeal hearing. The hearing officer shall not have had any personal involvement in the issuance of the citation being appealed, and shall have no personal or financial interest in the outcome of the appeal. Written notice of the date, time and location of the hearing shall be personally served upon or sent by first class mail to the appealing party at least ten (10) calendar days prior to the date scheduled for the hearing. If so requested by the appealing party, the hearing officer, in his discretion, may dispense with the necessity of a hearing and determine the matter based upon the materials submitted.

(e) Within ten (10) days after the conclusion of the hearing (or within ten (10) days after review of the submitted materials if no hearing is held), the hearing officer shall issue a written decision, which shall be mailed to the appealing party by first class mail at the address reflected in the written appeal [subsection (c)(3)]. If the appeal is denied or partially denied, any sums due pursuant to the citation previously issued, as modified by the hearing officer decision, shall be payable to the city within thirty (30) days subsequent to the date of the hearing officer's decision.

(f) A fine assessed by means of a citation may be collected by any means allowed by law. Enforcement actions are intended to be cumulative in nature. The city may pursue any and all lawful remedies, separately or concurrently, to effect compliance with an issued citation. The granting of a right of appeal pursuant to this section shall not interfere with or otherwise compromise the city's right to prosecute violations as a criminal offense.

**Section 6.** This ordinance shall become effective ten (10) days after its passage and final publication as provided by law.

CITY COUNCIL OF THE CITY OF DURANGO

  
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Mayor

Attest:

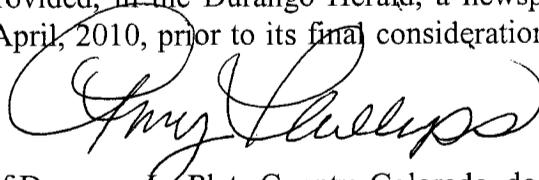
  
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City Clerk



STATE OF COLORADO

COUNTY OF LA PLATA

I, Amy Phillips, City Clerk of the City of Durango, La Plata County, Colorado, do hereby certify that Ordinance No. O-2010-6 was regularly introduced and read at a regular meeting of the City Council of the City of Durango, Colorado on the 20<sup>th</sup> day of April, 2010, and was ordered published in accordance with the terms and conditions of the statutes in such cases made and provided, in the Durango Herald, a newspaper of general circulation, on the 25<sup>th</sup> day of April, 2010, prior to its final consideration by the City Council.



I, Amy Phillips, City Clerk of the City of Durango, La Plata County, Colorado, do hereby certify that Amended Ordinance No. O-2010-10 was regularly introduced and read at a regular meeting of the City Council of the City of Durango, Colorado on the 18<sup>th</sup> day of May, 2010, and was ordered to be republished with amendments in accordance with the terms and conditions of the statutes in such cases made and provided, in the Durango Herald, a newspaper of general circulation, on the 23<sup>rd</sup> day of May, 2010.

*Amy Sullivan*  
City Clerk