

ORDINANCE 0-2013-1

AN ORDINANCE REPEALING AND REENACTING CHAPTER 10 OF THE CODE OF ORDINANCES OF THE CITY OF DURANGO PERTAINING TO TRASH COLLECTION AND RECYCLING AND DECLARING AN EFFECTIVE DATE.

WHEREAS, trash collection and recycling activities have been placed under the supervision of the City Operations Department; and

WHEREAS, the City Operations Department has reviewed and made recommended changes to Chapter 10 of the Code of Ordinances of the City of Durango for purposes of implementing a single-stream recycling program and to update other provisions of the Code to conform to current and anticipated practices; and

WHEREAS, the proposed modifications will provide greater accuracy and flexibility in the management of the trash collection and recycling activities of the City; and

WHEREAS, public hearing has heretofore been held before the City Council of the City of Durango, and the Council has determined, subsequent to said public hearing, that the repeal and reenactment of 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 That Chapter 10 of the Code of Ordinances of the City of Durango should be and the same is hereby repealed and reenacted, in its entirety, as follows:

CHAPTER 10

TRASH COLLECTION AND RECYCLING

- Art. I In General, §§ 10-1 – 10-15**
- Art II Collection, §§ 10-16 – 10-47**
 - Div. 1. Generally, §§10-16 – 10-40**
 - Div. 2. Containers, §§10-41 – 10-47**

ARTICLE I. IN GENERAL

Sec. 10-1. Definitions.

For purposes of this Chapter, the following words and phrases shall have the meanings hereinafter set forth:

Ashes means the residue from the burning of wood, coal, or other combustible material.

Bag means a container of moisture-resistant plastic, paper or other pliable material which is capable of holding trash during normal handling conditions and which is of sufficient strength to contain the contents put into it without breaking or rupturing.

Commercial user means any person, firm or corporation performing any business, industry, occupation, or profession. It shall also include dwelling units used for residential occupancy for three (3) or more families or groups of individuals living independently of each other in separate units where the land under the dwelling units is not individually owned by the residents. This includes apartments, condominiums, and mobile home parks.

Container means a city approved receptacle for the purpose of trash or recycling collection

Household Chemical Waste includes products typically used in household applications and marked: "Caution", "Danger", "Poison", "Hazardous", "Flammable", "Keep out of reach of children", "Harmful or fatal if swallowed", "Causes burns on contact", "Eye and skin irritant", "Use in a well ventilated area", "Vapor harmful", or other similar language.

Landfill means a discrete area of land or an excavation that receives household, commercial and other trash as defined and regulated by federal and state regulations and also includes transfer stations and convenience centers as intermediary options.

Multifamily structure means a structure, or portion thereof, designed exclusively for and occupied exclusively by three (3) or more families living independently of each other in individual dwelling units. These are residential or commercial depending on the ownership status of the land beneath the dwelling. See *Commercial* and *Residential* definitions.

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.

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.

Recyclable material includes, but is not limited to, metals, glass, plastic, paper and fiber products, which are intended for reuse, remanufacture or reconstitution. Recyclable material may include electronics, or household chemical wastes collected and transported in accordance with applicable state health and safety regulations.

Recycling and Trash Collection Supervisor means any person appointed by the city manager or his/her designee to perform the duties imposed upon such person by the city code.

Residential user means a dwelling unit used for residential occupancy where the land under the dwelling unit is also owned by the dwelling unit owner. This includes detached single family homes, duplexes, patio homes, townhomes and mobile home subdivisions.

Trash means solid or semi-solid discarded material including, but not necessarily limited to, ashes, litter, garbage, refuse, rubbish and recyclable materials.

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-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 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. 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.

Yard waste means grass clippings, lawn rakings, leaves, garden vegetation, brush and other woods, free of other trash.

Cross reference(s) – Definitions and rules of construction generally, §1-2

Secs. 10-2 – 10-15 Reserved.

ARTICLE II. COLLECTION

DIVISION 1. GENERALLY

Sec. 10-16. Responsibility of city.

The city shall make trash collection and disposal service available to all residential and commercial users and recycling collection and disposal service available to all residential users within city limits. The city shall make commercial recycling collection and disposal service available to all commercial users receiving city water and/or sewer services whether within or without city limits. Nothing within this article shall preclude such services from being offered to city residents by private businesses involved in the hauling of trash; provided, however, such private businesses shall comply with the provisions of sections 10-17, 10-20 and 10-23 and such other rules and regulations as the city council may adopt from time to time upon recommendation of the City Manager or his/her designee. Any user charges authorized

by the city council pursuant to resolutions enacted under the authority of section 10-22 shall not compel commercial users to use or pay user charges for trash services provided by the city in preference to those services provided by private businesses involved in the hauling of trash.

It shall be unlawful for anyone to remove from any container designated for recycling, any material of any value, except that city employees may collect that material on behalf of the city.

Sec. 10-17. Regulations.

- (a) All trash accumulated in the city shall be collected and disposed of by the city or by private trash haulers who have made application with the city clerk for a permit to do business within the city.
- (b) No person shall collect, convey over any of the streets or alleys of the city, or dispose of any trash accumulated within the city except as provided in this article.
- (c) The City Manager or his/her designee shall have the authority to make regulations with respect to collection and disposal of trash by the city, which regulations may pertain to the days of collection, type and location of pickup, and conveyance and disposal of trash. The City Manager or his/her designee shall have the authority to modify and revoke such regulations, from time to time, subject to review and approval by the city council. When the City Manager or his/her designee determines that it is appropriate to do so, he or she may require the placement of recyclable materials in containers of a specific design and placed at appropriate locations for collection. The City Manager or his/her designee shall have the authority to make regulations with respect to the purchase of containers, type of recyclable materials to be collected, frequency of collection or other items related to the collection of recyclable materials.
- (d) Nothing within this article shall prohibit the actual producers of trash or the owners of premises upon which trash has accumulated from personally collecting, conveying and disposing of such trash, provided, however, such producers or owners shall comply with the provisions of this article and with any other governing laws, ordinances or regulations, and provided further that such actual producers or owners shall not be exempt from the payment of collection fees unless otherwise specifically provided herein.
- (e) Nothing within this section or this article shall prohibit trash collected outside the city from being transported over city streets to designated landfills for refuse disposal; provided, however, such collectors and transporters shall comply with the provisions of this chapter regarding the transportation of trash.
- (f) All new residential and commercial developments, excluding detached single family homes, must provide adequate space for trash and recycling containers in a location approved by the City which will allow servicing of those containers.

Sec. 10-18. Junk and appliances.

Except as authorized by §10-47(f), it shall be unlawful for any person to place or leave outside any building or dwelling in the city any dilapidated furniture, appliance, machinery, equipment, building material, vehicle or portions thereof, or other items which are either wrecked, junked, dismantled or in inoperative condition, and which are not completely enclosed within a building or dwelling. Any such item or items which remain on the property or adjacent right-of-way of the occupant for a period of ten (10) days after notice of violation has been issued by the City shall be presumed to be abandoned and subject to being removed from the property by the city after notice to the landowner as provided in section 11-33. This section shall not apply to authorized junk dealers or establishments engaged in the repair, rebuilding, reconditioning or salvaging of equipment.

Cross reference(s) – Junked, wrecked and abandoned property, Ch. 12

Sec. 10-19. Dangerous property.

It shall be unlawful for any person to leave outside any building in a place accessible to people any appliance or container having an airtight snap lock or similar device without first removing the lock or door from such appliance or container. This section shall not apply to any appliance or container which has been placed adjacent to a building and is crated, strapped or locked to such an extent that it is impossible for a person to obtain access to any airtight compartment thereof. Any such appliance or container shall be kept from public view.

Sec. 10-20. Trash, disposal by actual producers.

- (a) The actual producers of trash or the owners of premises upon which trash is accumulated who desire, to personally collect and dispose of such trash shall do so in compliance with regulations of the City.
- (b) Nothing in this section shall be construed to exempt actual producers of trash or the owners or premises upon which trash is accumulated from the fees for trash collection which are provided for in this article.

Sec. 10-21. Responsibility of owner of premises.

The owner of the premises, as well as the occupants thereof, shall be responsible for compliance with the terms of this chapter and liable for any violation thereof.

Sec. 10-22. Trash collection fees.

- (a) The fees to be charged and collected by the city for trash collection, the frequency of pickup service to be offered by the city and the fees to be charged by the city for special services concerning the collection and transportation of trash shall be determined by the city council subsequent to public hearing duly advertised for such purposes. The schedule of fees and frequency of pickups shall be determined and enacted by resolution adopted by the city council, which resolution shall also specify an effective date for the fees and charges specified in the resolution. Such resolution may also specify a minimum residential user charge

which charge may be imposed and collected whether the residential property owner actually uses city trash services or not. If no minimum residential user charge is set by resolution, the fee shall automatically be that for the smallest available container size. Such charges are hereby determined to be necessary in order to allow the city to provide basic trash collection service to the residents of the city, which service promotes the public health, safety and welfare.

(b) The fees to be charged and collected by the city for recycling services for residential users, fees for household recycling material dropped off at the City's recycling center, fees for commercial and municipal large-volume recyclers, as well as fees for disposal of hazardous waste materials and electronic devices shall be determined by the city council subsequent to public hearing duly advertised for such purposes. The dates for disposal of hazardous waste materials and electronic devices shall be determined by the city manager. The schedule of fees and frequency of pickups for recyclable materials, other than hazardous waste materials and electronic devices, shall be determined and enacted by resolution adopted by the city council, which resolution shall also specify an effective date for the fees and charges specified in the resolution. Such resolution may also specify a minimum residential user charge which charge may be imposed and collected whether the residential property owner actually uses city recycling services or not. If no minimum residential user charge is set by resolution, the fee shall automatically be that for the smallest available container size. Such charges are hereby determined to be necessary in order to allow the city to provide basic recycling services to the residents of the city, which service promotes the public health, safety and welfare.

(c) The fees determined by council action in the form of a resolution are hereby assessed against the properties within the city receiving and benefiting from basic trash collection services and recycling services. If such fees are not paid within thirty (30) days after normal city billing for such services, the amount so assessed shall become a lien upon the property receiving or benefiting from such services or upon the property which is subject to a user charge as determined by resolution of the council. Collection of such assessment shall be in the manner provided by law.

(d) Minimum user charges for trash collection and recycling services will be added to all new residential accounts upon issuance of a certificate of occupancy. The city will provide a trash collection container to all new accounts and will provide a recycling container upon request. Trash collection fees for new commercial accounts or changes in volume for residential accounts shall be assessed determined on the availability of service on the first service day of each month. If a container is available for servicing on the first service day of the month, the monthly fee for that container will be assessed. If a container is not available for servicing on the first service day of the month, the monthly fee for that container will not be assessed.

(e) When a customer requests a discontinuation of city water and sewer services for a specific location trash collection and recycling services will also be discontinued and no minimum residential user charge will be assessed until such time that city water and sewer

services are again reinstated, at which time trash collection and recycling services will also be reinstated and minimum residential user charges will again apply.

(f) Fees determined by council action in the form of a resolution will be set so as to encourage the reduction, reuse and/or recycling of materials through a structure which allows for the charging of higher rates for larger containers and for the collection of more than two (2) containers per residential dwelling unit per week.

(g) All single family units that have individual water service lines will receive a separate bill for water, sewer, trash collection and recycling services. In cases where a group of single family units have established a Home Owners Association (HOA) or other similar contract for the purpose of paying trash collection and recycling charges in a collective fashion, an appropriate representative from the HOA must contact the finance department to request a single trash collection and single recycling bill for the participating dwelling units.

Sec. 10-23. Transportation.

(a) Any vehicle used to transport trash or yard waste must have suitable covers to prevent the loss of contents on property or roadways.

(b) It shall be unlawful for any person to drive or move any vehicle upon any public way unless such vehicle is so constructed or loaded as to prevent its contents from dropping, shifting, leaking or otherwise escaping therefrom; provided, however, sand or other abrasives may be dropped for purposes of securing vehicle traction and provided, further, that water, salt or other substances may be sprinkled upon roadways in the course of cleaning, clearing or maintaining such roadways by appropriate city departments.

Sec. 10-24. Dead animals.

(a) No person shall deposit or otherwise place any carcass or portion of any animal, bird or reptile for collection by the city. This prohibition shall not preclude the disposal of animal parts that are part of a meal or meal preparation.

(b) Any person in the city having knowledge of the existence or location of a dead animal, bird or reptile shall immediately notify the code enforcement officer of the location of such dead animal, bird or reptile and shall provide such additional information as the code enforcement officer or his designated agent may require.

Sec. 10-25. Construction sites and transportation of materials.

(a) All persons having secured a building permit from the city shall, prior to the commencement of any construction activity, furnish or place on the premises upon which construction is to occur, a container of suitable size and design to contain all trash which might be removed or disturbed from the premises by wind or other elements.

(b) If such container is filled, the person securing the building permit shall cause such container or fenced area to be emptied and its contents removed to an appropriate sanitary landfill.

(c) No person shall allow trash to blow or to be carried from the premises for which the building permit is secured.

(d) The city shall not be responsible for the collecting or hauling of building materials originating from private property preliminary to, during or subsequent to the construction of new buildings, alterations or additions to existing buildings or from the demolition of existing structures. Such materials shall be removed by the owner of the property or by the contractor. Neither a new certificate of occupancy nor a signed final inspection shall be issued or granted by the community development department until scrap building materials and other trash have been removed from the premises by the owner or contractor. Property will not be eligible for city service until a certificate of occupancy has been issued.

(e) Persons engaged in demolition who have obtained a permit from the city must remove the debris and structural parts resulting from such demolition and contain such materials from scattering in the same manner as set forth above with regard to construction sites. The conveyance or transporting of such materials from the site shall be in accordance with existing city ordinances. The removal of demolition debris shall be exempt from trash collection fees.

(f) Persons mixing concrete or transporting concrete on city streets shall not drop or leave waste concrete upon such streets. Such persons shall not drop or leave waste concrete upon any private property within the city, unless permission of the property owner has first been obtained. No person shall transport concrete upon the public streets of the city except in a proper truck or vehicle which prevents spillage or leakage of concrete upon the public streets.

Sec. 10-26. Multi-family recycling requirements.

- (a) Commercial multi-family complexes
 - (1) The responsible party for each commercial multi-family complex of eight (8) dwelling units or more shall be required to establish a recycling program in accordance with the terms listed herein.
 - a. The responsible party may elect to contract with the City or a private hauler for these purposes
 - b. The responsible party must provide notification to and continual education of its tenants on recycling issues and practices through an educational campaign. The responsible party shall distribute to every new tenant within 30 days of tenant occupancy, and all existing tenants at least annually, general recycling information and current program guidelines.
 - c. At a minimum, containers for not less than two (2) types of recyclable materials that have been approved for commercial recycling collection by the city manager or his/her designee, single stream and glass, shall be made available to residents.
 - d. Adequate space must be allocated for the collection

containers and containers must be located in a convenient location for residents, approved by the city, which will allow servicing of those containers. All new developments must provide for adequate space for containers in their site plans, pursuant to specifications provided and approved by the City.

e. To evaluate whether a code violation has occurred, city staff shall have the right to visit the premises and determine the presence, quantity and location of recycling containers and the form and type of educational information distributed to tenants.

(b) Residential multi-family complexes

(1) The responsible party for each residential multi-family complex of eight (8) dwelling units or more shall be required to provide their residents with the opportunity to recycle in accordance with the terms listed herein.

a. The responsible party must provide notification to occupants of the location of recycling containers and educational materials that are available.

b. At a minimum, containers for single stream recycling and glass recycling, adequately sized for weekly collection, must be available for residents.

Recycling materials must be limited to commodities approved for commercial collection by the City Manager or his/her designee.

c. Adequate space must be allocated for the collection containers and containers must be located in a convenient location for residents, approved by the city, which will allow servicing of those containers. All new developments must provide for adequate space for containers in their site plans, pursuant to specifications provided and approved by the City.

d. To evaluate whether a code violation has occurred, city staff shall have the right to visit the premises and determine the presence, quantity and location of recycling containers and the form and type of educational information distributed to tenants.

Sec. 10-27. Delinquent charges; collection by county.

Pursuant to the authority of C.R.S., section 31-20-105, the city council does hereby elect to certify to the county assessor for collection of any and all delinquent trash collection or recycling collection charges due and payable to the city, to be collected by the county treasurer and paid over to the city in the same manner as ad valorem real property taxes are authorized to be collected pursuant to C.R.S., Title 31.

Secs. 10-28--10-40. Reserved.

DIVISION 2. CONTAINERS

Sec. 10-41. Preparation for ~~solid waste~~ trash collection.

(a) All owners, occupants or other persons in charge of any premises within the city from which trash is collected, whether by the city or by private collection firms, shall place all trash in containers approved by the City Manager or his/her designee and provided by the city or private haulers.

(b) No building materials, sod, rocks, large pieces of hard metal, concrete blocks, concrete, or residential tires shall be placed for city collection.

(c) The removal and disposal of wearing apparel, bedding or other trash from homes or other places where highly infectious or contagious diseases have prevailed shall be performed under the supervision and according to the rules and regulations of the state health department. Such trash shall not be placed in containers for regular city trash collection.

(d) No potentially hazardous trash such as televisions, computer monitors and other electronics, paints, poison, acids, caustics, chemicals, infected materials, explosives, florescent bulbs, or household chemicals shall be placed in any container for collection by the city, nor shall the same be collected by the city except at special events designated for this purpose.

(e) Tree and shrubbery branches and limbs and trimmings cut by landscape service, tree service contractors, commercial workmen or resulting from the clearing of land, shall not be the responsibility of the city and must be removed and disposed of by the contractor or property owner.

(f) All trash must fit securely into the container with the lid closed for city collection. No trash set around the perimeter of the can will be collected by the city.

(g) The opening for the container must face towards the right-of-way for servicing.

Sec. 10-42 Preparation of recyclables.

- (a) All residential units must have a city approved recycling container to receive city recycling services. All recycling containers shall be placed along the curbside of the residence in order to obtain service.
- (b) In order for a recycling container to be serviced by the city, all recyclable material must fit securely inside the specified collection container with the lid closed. Additional recyclable materials placed around the perimeter of the container will not be picked up by the city.
- (c) All recyclable material shall be placed loosely in the container and shall not be compacted or bagged.
- (d) Only those materials that have been approved for recycling by the City Manager or his/her designee shall be placed in recycling containers for collection.

Sec. 10-43. Required.

It shall be unlawful, and no person shall permit or allow the accumulation of trash upon any property within the city except in containers provided for the disposal of such trash.

Sec. 10-44. Certain businesses to provide receptacles.

Each fast-food or drive-in restaurant, convenience store or other business generating trash disposed of by customers shall provide at least one (1) appropriate trash receptacle at or near each door from which a customer may exit the business establishment. Such trash receptacles shall be kept free of grease and other matter that may attract insects or create offensive odors.

Sec. 10-45. Trash and recycling receptacles furnished by city.

Containers provided by the city for trash collection and recycling services are the property of the city.

(a) Residential users:

(1) Containers placed at residences are to remain at the residence as long as city trash collection or recycling service are provided and such containers are not to be relocated to another residence except by a city employee.

(2) All newly built single-family and duplex units are entitled to a trash collection container and, upon request, to one (1) curbside recycling container at no charge.

Sec. 10-46. Same Specifications for use.

The provisions of this section shall apply to containers which are provided by the city for either residential or commercial trash collection or recycling services provided by the city:

(a) Residential and commercial users utilizing city trash collection services are required to utilize a city-provided container.

(b) All persons receiving trash collection service through containers provided by the city shall comply with rules and regulations established by the City Manager or his/her designee for the use, care and location of such containers and shall keep the lids on such containers in a closed position at all times except when they are being filled or emptied. Wildlife resistant containers shall be kept in a locked condition except when being filled or emptied.

(c) All persons receiving trash collection service through containers provided by the city shall, if required by the City Manager or his/her designee, as a condition to receive such service, provide suitable level ground, cement or an asphalt pad constructed to specifications of the city engineer, upon which to locate city containers .

(d) It is unlawful for any person or entity other than such persons as are required and authorized by this section to receive trash collection service through containers provided by the city, to deposit trash or any other material in such containers provided by the city. The City Manager or his/her designee is authorized to place on all containers provided by the city for trash collection, a notice that unauthorized dumping is prohibited by this section. The prohibitions of this section shall also apply to unauthorized dumping within containers provided by the city at public parks or upon other public property.

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

(a) Trash and recycling 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 and recyclable materials 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) Trash containers shall be placed out for collection at the edge of the right-of-way of a street or alley. Recycling containers shall be placed for collection along the curbside of the property being served. 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. Trash and recycling containers shall be placed so as to leave a four (4) foot clearance around the container for safe pickup. Trash containers and recycling containers shall be placed out for collection no earlier than 6 a.m. on the day of collection and must be removed from the right-of-way no later than 8 p.m. on the day of collection. 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) Trash and recycling containers shall at all times be kept in such a manner as to preclude the scattering of trash and recyclable materials. 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.

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, or trash. For purposes of this section, the term "property" includes adjacent private property or public right-of-way if the refuse, rubbish, garbage or trash 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, or trash or reflects the scattering thereof on such property, he shall cause an investigation to be made into the spilling or scattering of such

material 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 trash 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.

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, or trash 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 manner described in §10-27.

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).

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

