

Public Notice: A public hearing for the County of Elbert for contemplated approval upon first or second reading, the following regulatory ordinance(s). The public hearing will be held before the Board of County Commissioners of Elbert County, Colorado, on December 19, 2018 at 9 a.m. in the Board Meeting Room located at 215 Comanche Street, Kiowa, CO 80117 to consider the following proposed ordinance(s). WHEREAS, the Board of County Commissioners, Elbert County, Colorado, has prepared or caused to be prepared an ordinance regulating the following: **ORDINANCE NO. 18-3 AN ORDINANCE OF THE COUNTY OF ELBERT, STATE OF COLORADO, ESTABLISHING APPLICABILITY AND DEFINITIONS; PREVENTING AND SUPPRESSING RIOTS, ROUTS, AFFRAYS, DISTURBANCES, AND DISORDERLY ASSEMBLIES IN ANY PUBLIC OR PRIVATE PLACE; SUPPRESSING BAWDY AND DISORDERLY HOUSES AND HOUSES OF ILL FAME OR ASSIGNATION; RESTRAINING AND PUNISHING LOITERERS AND PROSTITUTES; REGULATING NOISE ON PUBLIC AND PRIVATE PROPERTY; ESTABLISHING PENALTIES AND AUTHORIZING ANY ARRESTING LAW ENFORCEMENT OFFICER TO FOLLOW THE PENALTY ASSESSMENT PROCEDURE PROVIDED IN SECTION 16-2-201, C.R.S.; ADOPTING A GRADUATED FINE SCHEDULE FOR SUCH VIOLATIONS, INCLUDING INCREASED PENALTY ASSESSMENTS FOR REPEAT OFFENSES BY THE SAME PERSON; PROVIDING FOR DISPOSITION OF FINES; PROVIDING THAT REMEDIES AND/OR PENALTIES SHALL BE CUMULATIVE; LIMITING LIABILITIES; GOVERNING CONFLICT AMONG ORDINANCES, RESOLUTIONS, OR CODES; AND ADOPTING SAVINGS AND SAFETY CLAUSES.** Copies of the proposed ordinance(s) are available for inspection at the County Administration Building upon request at 215 Comanche Street, Kiowa, CO 80117 during normal business hours. The full text of the ordinance follows:

WHEREAS, pursuant to C.R.S. § 30-15-401, et seq., the Board of County Commissioners of Elbert County, Colorado (hereinafter the “Board”), has the power to adopt ordinances for the control of matters purely of local concern as described therein; and

WHEREAS, the Board of County Commissioners of Elbert County finds that adoption of this Ordinance is necessary to preserve the public peace, health, safety and welfare of the citizens of Elbert County;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ELBERT COUNTY, COLORADO, as follows:

Section 1. Applicability.

1.1 This Ordinance shall apply throughout the unincorporated area of Elbert County, including public, private and state lands, and to any incorporated town or city which elects by ordinance or resolution to have the provisions hereof apply. Nothing herein shall prevent the exercise by a person of Constitutional rights; freedom of speech, freedom of religion, and/or the right to peaceably assemble for the common good, and to apply to those invested with the powers of government for redress of grievances.

Section 2. Definitions.

- 2.1 Unless otherwise specified, all words and phrases utilized herein shall be read in context and construed according to the rules of grammar and common usage. The singular includes the plural, and the plural includes the singular. Words in the present tense include the future tense. Every word importing the masculine gender only may extend to and be applied to females and things and persons, as well as males. Every word importing the feminine gender only may extend to and be applied to males and things and persons, as well as females. Every word importing the natural gender only may extend to and be applied to persons, as well as things.
- 2.2 The term "alcoholic beverages" as used herein means malt, vinous, or spirituous liquors as the same are defined in C.R.S. § 12-47-103 or title 18 of Colorado Revised Statutes.
- 2.3 The term "breach of the peace" as used herein, is a disturbance of public order by an act of violence or by any act likely to produce violence, or which, by causing annoyance or alarm, disturbs the peace and quiet of the community.
- 2.4 The term "controlled substance" as used herein means a drug or other substance or an immediate precursor which is declared to be a controlled substance under C.R.S. § 12-22-301, et seq., or title 18 of Colorado Revised Statutes, and also includes marihuana and marihuana concentrate and cocaine.
- 2.5 The term "disorderly assembly" as used herein, includes, without limitation, a gathering of more than one (1) person on public, private and state lands at which there occurs illegal distribution, possession or consumption of alcoholic beverages or ethyl alcohol; illegal distribution, possession or use of controlled substances; fighting; brandishing of weapons; riotous or disorderly conduct; drunkenness or quarrelling likely to result in or resulting in breach of the peace; or activity which results in violations of other terms of this Ordinance.
- 2.6 The term "disorderly house" as used herein includes, without limitation, any structure and/or adjoining property or both which is used, owned, kept, or controlled by a person upon or within which any illegal distribution, possession or consumption of alcoholic beverages or ethyl alcohol; illegal distribution, possession, or use of controlled substances; fighting; brandishing of weapons; riotous or disorderly conduct; drunkenness or quarrelling likely to result in or resulting in breach of the peace; or other violations of this Ordinance are permitted, allowed, occasioned, encouraged or suffered.
- 2.7 The term "ethyl alcohol" means any substance which is or contains ethyl alcohol.
- 2.8 The term "keeping a place of prostitution" as used herein is defined in C.R.S. § 18-7-204 (1).
- 2.9 The term "loitering" as used herein means to be to stand idly around, to linger, delay, or wander about, or to remain, abide, or tarry in a public place.
- 2.10 The term "minor" as used herein, means any individual who has not attained his or her eighteenth birthday.

2.11 The term "pandering" as used herein, is defined in C.R.S. § 18-7-203 (1).

2.12 The term "person" as used herein, means any individual, corporation, partnership, limited partnership, limited liability company, association, and/or unincorporated association, and includes minors. The term does not mean the United States or any agency thereof, nor the State of Colorado or any agency thereof, nor any local government, Municipal Corporation, or political subdivision of the State of Colorado.

2.13 The term "pimping" as used herein, is defined in C.R.S. § 18-7-206.

2.14 The term "prostitution" as used herein is defined in C.R.S. § 18-7-201 (1) and (2).

2.15 The term "recklessly" as used herein is defined as follows:

- (1) A person acts recklessly when he or she consciously disregards reasonable evidence or reasonable notice that a circumstance or condition prohibited by this Ordinance exists, and the person fails or refuses to take reasonable action within the person's power to eliminate or ameliorate the condition violating this Ordinance.

2.16 The term "soliciting for prostitution" as used herein is defined in C.R.S. § 18-7-202 (1).

2.17 The term "vehicle" as used herein, shall have the same meaning as that set forth in C.R.S. § 42-1-102 (88).

Section 3. Prevention of Riots, Routs, Affrays, Disturbances and Disorderly Assemblies.

3.1 It is unlawful for any person within Elbert County to commit any of the following acts:

- (1) Molest pedestrians upon the streets or other public places by following them on foot or in a vehicle or by soliciting them to take rides in automobiles.
- (2) Communicate using abusive language or threats to persons present which creates a clear and present danger or incites violence.
- (3) Fight with another in a public place other than in a duly authorized contest or demonstration or without a legal justification such as self-defense.
- (4) Without authorization, to alter, destroy, deface or damage public property or private property of another without legal authority.
- (5) Create a substantial risk of causing bodily injury to others by failing to obey any lawful order or command for dispersal by a peace officer or fireman, where persons are engaged in the commission of breach of the peace or are present in the immediate vicinity of fire-fighter or law enforcement operations.
- (6) Participate in, attend, or be present at a disorderly assembly.
- (7) To knowingly, intentionally, or recklessly permit, encourage, or allow a minor to participate in, attend, or be present at a disorderly assembly, where the minor is the natural or adopted child of or in the legal custody and/or physical custody of a person. The second violation of Section 3, Paragraph 3.1 (6) of this Ordinance by a minor within

a six (6) month period shall constitute *prima facie* evidence that a parent or legal and/or physical custodian has knowingly, intentionally, or recklessly permitted, encouraged, or allowed a minor to participate in, attend, or be present at a disorderly assembly.

- (8) To cause or participate in a breach of the peace.
- (9) Keep or be in control of any place where people congregate wherein a breach of the peace or a disorderly assembly is encouraged, supported or allowed.
- (10) To knowingly, intentionally, or recklessly permit, encourage, or allow a minor, without authorization, to alter, destroy, deface or damage public property or private property of another, where the minor is the natural or adopted child of or in the legal custody and/or physical custody of a person. The second violation of Section 3, Paragraph 3.1 (4) of this Ordinance by a minor within a six (6) month period shall constitute *prima facie* evidence that a parent or legal and/or physical custodian has knowingly, intentionally, or recklessly permitted, encouraged, or allowed a minor, without authorization, to alter, destroy, deface or damage public property or private property of another.

Section 4. Enforcement of Disorderly Houses, Prostitution Locations, and Chop Shops.

4.1. It is unlawful for any person within the County of Elbert to commit any of the following acts:

- (1) To knowingly, intentionally or recklessly keep any disorderly house.
- (2) To knowingly, intentionally or recklessly keep a place of prostitution.
- (3) To knowingly, intentionally, or recklessly keep, cause or permit to be kept any public or private place, property, or premises which allows or encourages professional gambling; illegal distribution, possession, or use of controlled substances; illegal distribution, possession, or consumption of alcoholic beverages or ethyl alcohol; soliciting for prostitution; or trafficking of stolen property.
- (4) To knowingly, intentionally or recklessly permit another person to commit any act declared unlawful by this Ordinance in or upon any property or premises owned, possessed or under a person with management or control when the person has the power to prevent such act.

Section 5. Restraining and Punishing Loiterers and Prostitutes.

5.1. It is unlawful for any person within Elbert County to commit any of the following acts:

- (1) Loitering for purposes prohibited by C.R.S. § 18-9-112 (2).
- (2) Loitering for the purpose of illegally obtaining cigarettes or tobacco products or for the purpose of illegally obtaining, illegally possessing, or illegally consuming alcoholic beverages, or ethyl alcohol.
- (3) Prostitution, soliciting for prostitution, pandering, keeping a place of prostitution, or pimping, as the same are defined in C.R.S. § 18-7-201, *et seq.* or as previously defined in this Ordinance.
- (4) To knowingly, intentionally or recklessly permit, encourage or allow a minor to commit

loitering for the purposes prohibited in Section 5 paragraphs 5.1 (1) and/or (2) of this Ordinance, or prostitution, soliciting for prostitution, pandering, keeping a place of prostitution, or pimping, where the minor is the natural or adopted child of or in the legal custody and/or physical custody of a person. The second violation of Section 5 paragraphs 5.1 (1), (2), and/or (3) of this Ordinance by a minor within a six (6) month period shall constitute *prima facie* evidence that a parent or legal and/or physical custodian has knowingly, intentionally or recklessly permitted, encouraged, or allowed a minor to commit loitering for the purposes prohibited in Section 5 paragraphs 5.1 (1) and (2) of this Ordinance or prostitution, soliciting for prostitution, pandering, keeping a place of prostitution, or pimping in violation of Section 5 paragraph 5.1 (3).

Section 6. Regulating Noise on Public, Private and State Property.

6.1 It is unlawful for any person within Elbert County to commit any of the following acts:

- (1) To make, continue, encourage or cause to be made any unnecessary, unusually loud, or in itself unusual sound or noise which either annoys, injures or endangers the comfort, health, or safety of other persons or which interferes with the private enjoyment of surrounding environment, or which could reasonably be expected to do so.
- (2) To produce within or upon a vehicle sound or noise by means of electronic or pneumatic amplification equipment which sound or noise is audible outside a vehicle, and which sound or noise is not commercial or political speech or which is not caused as a part of a legal and organized parade or rally.
- (3) To operate any vehicle that is not equipped with a muffler in constant operation and is not properly maintained to prevent an increase in the noise emitted by the vehicle above the noise emitted when the muffler was originally installed; or to operate any vehicle having a muffler that has been equipped or modified with a cutoff, or bypass, or any similar device or modification.
- (4) It shall be *prima facie* evidence that this Ordinance has been violated if, between the hours of 11:00 p.m. and 6:00 a.m. in any location zoned for residential occupancy, sound or noise emanating from any premise or property shall exceed the level of normal human conversation at the property line of the property from which the sound or noise is emanating. For the purpose of this Ordinance, a law enforcement officer is empowered to make a *prima facie* determination whether sound or noise violates this Ordinance. In making such determination, the officer shall consider the constancy or intermittence of the noise and the beat frequency or shrillness thereof. The officer may consider such other matters and extenuating circumstances as he or she in the exercise of reasonable judgement may observe or hear, including, without limitation, duration of sound or noise, time of day or night, day of week, and distance of sound or noise source from the complainant or person affected.
- (5) Except as exempted in Section 6 paragraph 6.2 of this Ordinance, this Ordinance shall apply to all sound or noise, whether on public, private or state property, whether stationary or mobile, including, without limitation, animal noises; vehicle noises; tool, equipment and machinery noises; music; and the use of television, radios, disk players, tape players, powered speakers, musical instruments, and amplifiers, or sound or noise exceeding maximum permissible noise levels as stated in C.R.S. § 25-12-103.

6.2. The regulation of sound or noise on public, private and state property by this Ordinance shall not apply to the following:

- (1) Property used for purposes which are exempt, pursuant to C.R.S. § 25-12-103, from noise abatement.
- (2) Property which is zoned and used for manufacturing, industrial, or commercial business purposes or property which is used for agricultural purposes.
- (3) Public utilities regulated pursuant to C.R.S. Title 40.
- (4) Oil and gas production subject to the provisions of C.R.S. Article 60 of Title 34.
- (5) Operation of emergency vehicles.
- (6) Construction or building activity requiring a building permit and generally conducted during normal business hours.
- (7) Utility installation or repair generally occurring during normal business hours and emergency utility repair occurring at any time.
- (8) Lawn, grounds, and right-of-way maintenance activity which is temporary and generally conducted during daylight hours.
- (9) Activities which are authorized governed and/or controlled by the terms of an approved Elbert County conditional use permit or special events permit.
- (10) The lawful discharge of firearms; the lawful discharge of fireworks pursuant to C.R.S. Title 12, Article 28; or the lawful discharge of explosives pursuant to C.R.S. Title 9, Article 7, or C.R.S. Title 34, Articles 20-54.

Section 7. Penalties.

7.1 Any person who violates any provision of this Ordinance commits a class 2 petty offense.

7.2 With regard to the following Sections and paragraphs of this Ordinance, each day during which a violation exists or continues shall be deemed a separate offense.

- (1) Section 3, paragraph 3.1 (9).
- (2) Section 4, paragraphs 4.1 (1) – (4).
- (3) Section 6, paragraph 6.1 (3).

7.3 Penalty Assessment Procedure. Except as set forth in Section 7 paragraph 7.4, the penalty assessment procedure provided in C.R.S. § Section 16-2-201, may be followed by any arresting or citing law enforcement officer for any violation of this Ordinance, as follows:

- (1) When a person is arrested or cited for violation of this Ordinance, the officer may either give the person a penalty assessment notice (citation) and release him/her upon its terms or take him/her before a judge of the county court in Elbert County after arrest.
- (2) The penalty assessment notice (citation) shall be a summons and complaint containing identification of the alleged offender, specification of the offense and applicable fine, a requirement that the alleged offender pay the fine or appear to answer the charge at a specified time and place, and any other matter reasonably adapted to effectuating the purposes of this section. A duplicate copy shall be sent to the clerk of the county court in Elbert County.

(3) If the person given a penalty assessment notice (citation) chooses to acknowledge his/her guilt, he/she may pay the specified fine in person or by mail at the place and within the time specified in the notice. If he/she chooses not to acknowledge his/her guilt, he/she shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be that specified in the notice for the offense of which he/she was found guilty, but customary court costs may be assessed against him/her in addition to the fine.

7.4 Any violation of provisions of this Ordinance by a person on the first incident within a six (6) month period shall result in a fine of fifty dollars (\$50.00). A second violation of any provision of this Ordinance within a six (6) month period shall result in a fine of one hundred dollars (\$100.00). A third or further violation of this Ordinance within a six (6) month period shall result in a fine of three hundred dollars (\$300.00) for each violation. The first violation of the provisions of this Ordinance within a six (6) month period may be disposed of without the requirement of an appearance before the court. Second and third or further violations of the provisions of this Ordinance within a six (6) month period shall require the appearance of the person in the County Court of Elbert County on an appointed date to answer the charges.

7.5 Any establishment which engages in repeated or continuing violations of this Ordinance shall constitute a public nuisance. The Elbert County Attorney, or the District Attorney of the Eighteenth Judicial District acting pursuant to C.R.S. § 16-13-302, may bring an action in the District Court of Elbert County for an injunction against the operation of such establishment in a manner which violates this Ordinance.

Section 8. Disposition of Fines.

8.1 All fines imposed and collected for any violation of this Ordinance shall be paid into the general fund of Elbert County.

Section 9. Remedies and/or Penalties to be Cumulative.

9.1 Remedies and/or penalties hereunder shall be cumulative with and in addition to any other remedy and/or penalty authorized by law, statute, ordinance, or resolution. The terms of this Ordinance shall not deprive any person or governmental entity of any right of action it may have, or prevent charging under any other federal law, state law, or local law, ordinance, code, or resolution.

Section 10. Non-Liability.

10.1 Neither the Elbert County Board of County Commissioners, nor the Elbert County Sheriff, nor any of their respective officers, employees, or agents authorized to enforce the provisions of this Ordinance, shall be held responsible for any accident or subsequent disease or for any loss or damages resulting from enforcement of this Ordinance.

Section 11. Conflict among Ordinances, Resolutions or Codes.

11.1 If the terms of this Ordinance conflict with the terms of any other Elbert County ordinance, resolution, or code, the more restrictive ordinance, resolution, or code shall apply.

Section 12. Savings Clause.

12.1 If any provision or provisions of this Ordinance are determined by a court of law to be invalid, such a determination shall not affect the remaining provisions of this Ordinance. To this end, the provisions of this Ordinance are determined and declared to be severable.

Section 13. Safety Clause.

13.1 The Elbert County Board of County Commissioners hereby finds and determines that adoption of this Ordinance is necessary for the immediate preservation of the public health, safety and welfare.

End Text

Following the hearing, consideration based on this first or second reading will be given to the final passage and adoption of the Ordinance(s). In case of any discrepancy between the summary of the ordinance(s) printed here and the official text of the ordinance(s), the official text shall control.