

TOWN OF GYPSUM, COLORADO

**ORDINANCE NO. 01
SERIES 2024**

**AN ORDINANCE PROVIDING FOR THE COMPLETE DECRIMINALIZATION
OF THE GYPSUM MUNICIPAL CODE**

WHEREAS, the Town of Gypsum ("Town") is a home rule municipality duly organized and existing under Articles XX of the Colorado Constitution and the Town's Home Rule Charter effective October 21, 1982; and

WHEREAS, by Ordinance No. 1, Series 1985, and pursuant to the provisions of Section 31-16-201 through 31-16-208 of the Colorado Revised Statutes, as amended, the Town Council adopted the Gypsum Municipal Code ("Code") consisting of a codification of the Town's ordinances of a general and permanent nature; and

WHEREAS, by Ordinance No. 15 (Series 2020), the Town Council repealed and readopted Title 2 (Administration and Personnel) of the Code, which included a decriminalization of the Code; and

WHEREAS, the Town Council desires to remove any remaining references in the Code that specify criminal penalties; and

NOW, THEREFORE, be it ordained by the Town Council of the Town of Gypsum, Colorado that:

Section 1. Amendments to Decriminalize the Gypsum Municipal Code. Sections 2.01.170, 2.01.190, 2.01.200, 2.01.210, 2.01.220 6.02.010, 6.15.040(6), 9.04.150(d), 10.01.100(b), 15.04.023(b), 18.19.050(a), 18.20.040(1), and 20.05.101(b) of the Gypsum Municipal Code are hereby amended as shown on Exhibit A attached hereto and incorporated herein by this reference.

Section 2. Repeal and Readoption of Subsection 6.15.040(5) of the Gypsum Municipal Code. Subsection 6.15.040(5) of the Gypsum Municipal Code is hereby repealed in its entirety and readopted as shown on Exhibit A attached hereto and incorporated herein by this reference.

Section 3. Public Inspection. Copies of this ordinance and the Gypsum Municipal Code are available for public inspection at the office of the Gypsum Town Clerk.

Section 4. Public Hearing: A public hearing on this Ordinance shall be held on the 23rd day of January, 2024, at 7:00 p.m. at the Town of Gypsum Town Hall, 50 Lundgren Boulevard, Gypsum, Colorado.

Section 5. Effective Date. This Ordinance shall become effective as a permanent Ordinance five (5) days after publication, following final adoption after a public hearing held on the 23rd day of January, 2024, at 7:00 p.m., at the Town of Gypsum Town Hall, 50 Lundgren Blvd., Gypsum, Colorado.

Section 6. Severability. If any portion of this Ordinance, or the Gypsum Municipal Code amended hereby, is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

INTRODUCED, READ AND ORDERED PUBLISHED BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO, UPON A MOTION DULY MADE AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF GYPSUM ON THE 23rd DAY OF JANUARY, 2024.

EXHIBIT A
AMENDMENTS TO THE GYPSUM MUNICIPAL CODE

Amendment of Section 2.01.170. Section 2.01.170 of the Gypsum Municipal Code is amended by deleting the stricken text as follows:

When the court finds any person to be in contempt, the court may vindicate its dignity by imposing on the contemnor a fine and/or imprisonment as set forth in this Chapter.

Amendment of Section 2.01.190. Section 2.01.190 of the Gypsum Municipal Code is amended by deleting the stricken text and adding the double-underlined text as follows:

- (1) *In general.* Where it appears that the efficient administration of criminal justice will be served, the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement. A plea agreement shall be discussed and reached in accordance with the provisions of C.R.S. 16-7-301 et seq., as amended.
- (2) *Deferred prosecution.* The court may, prior to the entry of a plea of guilty and with the consent of the defendant, his attorney and the prosecuting attorney, order the prosecution of the offense to be deferred for a period not to exceed one year. During such time, the court may place the defendant on supervised or unsupervised probation on such reasonable terms and conditions as the defendant, his attorney and the prosecuting attorney may agree; however, no jail time may be imposed as a condition of such deferred prosecution.
- (3) ~~*Deferred sentence.* In any case in which the defendant has entered a plea of guilty, the court has the power, with the written consent of the defendant, his attorney and the prosecuting attorney, to continue the case for a period not to exceed one year from the date of entry of such plea for the purpose of entering judgment and sentence upon such plea of guilty. During such time, the court may place the defendant on supervised or unsupervised probation on such reasonable terms and conditions as the defendant, his attorney and the prosecuting attorney may agree.~~
- (4) *Dismissal of action or revocation.* Any charge(s) deferred pursuant to sections 2 and 3 of this Section ~~2.01.200~~ 2.01.190 shall be dismissed, with prejudice, upon the defendant's satisfactory

completion of the period of probation. If the conditions imposed on the defendant pursuant to subsections (2) ~~and (3)~~ of this Section ~~2.01.200~~ 2.01.190 are violated, the prosecuting attorney may file a motion to revoke the deferred prosecution ~~or sentence~~. The determination of whether or not a violation has occurred shall be made by the court after a hearing held upon notice of the same of not less than five days, unless such notice is waived, to the defendant and his attorney of record. The motion to revoke the deferred prosecution shall be made during the period of probation or within 30 days thereafter.

Amendment of Section 2.01.200. Section 2.01.200 of the Gypsum Municipal Code is amended by deleting the stricken and adding the capitalized and double underlined text as follows:

The municipal judge is empowered, in his discretion, to assess the following costs against any defendant who is found guilty of violating any provision of the Gypsum Municipal Code or any of the ordinances of the Town or against any defendant who is granted a deferred prosecution ~~or deferred sentence~~:

- (1) *Court costs.* Court costs of \$35.00 may be assessed against every defendant who is found guilty or who has pled guilty or no contest to any ordinance or Charter violation, and for every court-scheduled appearance a defendant fails to attend without being excused by the municipal judge.
- (2) *Witness fees.* Three dollars (\$3.00) per day or part of a day in which the witness is actually in court plus mileage at the rate of 90% of the prevailing internal revenue service mileage reimbursement rate to the nearest cent per mile for each mile actually and necessarily traveled from the witness's residence to the court.
- (3) *Bench warrant fee.* Fifteen dollars (\$15.00) per warrant issued plus any costs incurred for transporting the defendant from his place of arrest to the Town of Gypsum.
- (4) *Probationary or other services.* Actual costs incurred either by the town or the defendant for probationary or treatment services for the defendant or useful public service by the defendant as such may be ordered by the court;
- (5) *Letter fee.* Five dollars per letter for any letter sent to a defendant where the defendant has failed to respond to a written notice of court

or a summons. Such letter fee shall not limit the court's ability to fine or sentence a defendant for contempt for such failure to respond; and

- (6) *Jail costs.* Actual per day cost charged to the Town by the Eagle County Jail or Eagle County Sheriff for each day a defendant is ~~sentenced to~~ HELD IN jail.
- (7) *Interpreter fee.* If the court makes a foreign language, sign language, or other interpreter available to assist the defendant, actual costs incurred by the Town for the services of the interpreter.

Amendment of Section 2.01.210. Section 2.01.210 of the Gypsum Municipal Code is amended by deleting the stricken text as follows:

The municipal judge is empowered to order a defendant who is found guilty of violating any provision of the Gypsum Municipal Code or any of the ordinances of the Town or who is granted a deferred prosecution ~~or deferred sentence~~ to make restitution or reparation, or both, to the victim of the defendant's conduct for the damage or injury which was sustained.

Amendment of Section 2.01.220. Section 2.01.220 of the Gypsum Municipal Code is amended by deleting the stricken text as follows:

The municipal judge is empowered to place a defendant who is found guilty of violating any provision of the Gypsum Municipal Code or any of the ordinances of the Town or who is granted a deferred prosecution ~~or deferred sentence~~ on probation for a period not to exceed one year. Such probation may be supervised or unsupervised and may be made conditional upon the successful completion of reasonable terms and conditions. Revocation of probation shall occur in the same manner as revocation of a deferred prosecution ~~or deferred sentence~~. The municipal judge is empowered to utilize such probationary services as are provided by the Town Council or with which the court may contract at no cost to the Town.

Amendment of Section 6.02.010. The definition of "Habitual Offender" contained in Section 6.02.010 of the Gypsum Municipal Code is amended by deleting the stricken text as follows:

Habitual offender means any pet animal or working dog owner who has pled guilty to, or been found guilty of, violating any

provision of this chapter three times within any 18-month period. For the purposes of this chapter, after the effective date of this chapter any disposition of charges involving probation ~~or deferred judgment and sentencing~~ shall be considered to be convictions.

Repeal and Readoption of Subsection 6.15.040(5). Subsection 6.15.040(5) of the Gypsum Municipal Code is repealed in its entirety and readopted as follows:

- (5) If a person received a summons and complaint or penalty assessment notice pursuant to this Chapter for an offense defined by this Code as a civil infraction and such person fails to pay the fine and surcharge for the violation on or before the date the payment is due and fails to appear in person or by counsel before the municipal court for a first hearing, the municipal court shall enter a plea of not guilty pursuant to Rule 211(d) of the Colorado Rules of Municipal Court Procedures. If a person fails to appear before the municipal court for a final hearing when scheduled, the municipal court shall enter a default judgment convicting the person of the animal control infraction.

Amendment of Subsection 6.15.040(6). Subsection 6.15.040(6) of the Gypsum Municipal Code is amended by deleting the stricken text as follows:

- (6) All fines listed in this Chapter are minimum penalties and all violations are subject to the maximum fine provisions as set forth in Section 2.01.090(6) of the G.M.C., ~~and/or up to 180 days in jail.~~

Amendment of Subsection 9.04.150(d). Subsection 9.04.150(d) of the Gypsum Municipal Code is amended by deleting the stricken text as follows:

- (d) It is unlawful for any person to violate any provision of, or to fail to comply with any of the requirements of, this chapter. Any person who violates any provisions of this chapter shall be subject to the jurisdiction of the Gypsum Municipal Court and shall be punished by a maximum fine as set forth in Section 2.01.090(6) of the G.M.C., ~~or by imprisonment for a period of not more than 180 days or by both such fine and imprisonment; provided, no person under the age of 18 years shall be punished by imprisonment.~~

Amendment of Subsection 10.01.100(b). Subsection 10.01.100(b) of the Gypsum Municipal Code is amended by deleting the stricken text as follows:

- (b) Every person convicted of a violation of any provision stated or adopted in Title 10 of the Gypsum Municipal Code shall be

punished by a fine not to exceed the maximum amount set forth in Section 2.01.090(6), ~~or by imprisonment for not more than one year, or by both such fine and imprisonment.~~

Amendment of Subsection 15.04.023(b). Subsection 15.04.023(b) of the Gypsum Municipal Code is amended by deleting the stricken text as follows:

- (b) Any person who violates the provisions of this Chapter is liable upon conviction for a fine of not more than \$100.00, ~~or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment.~~ Each day of violation shall be deemed a separate offense. The fire code official shall have authority to cite violations of the fire code to Gypsum Municipal Court.

In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, remodeled, used or maintained in violation of the provisions of this Chapter, the board, building official, the town attorney, or any owner of real estate within the area, in addition to other remedies provided by law, may institute an appropriate action for other remedies provided by law, may institute an appropriate action for injunction, mandamus or abatement to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, remodeling, maintenance or use.

Amendment of Subsection 18.19.050(a). Subsection 18.19.050(a) of the Gypsum Municipal Code is amended by deleting the stricken text as follows:

- (a) It is unlawful for any person to violate any provision of this chapter. Any such violation is hereby designated a criminal offense and any person found guilty of violating any of the provisions of the chapter shall, upon conviction thereof, be punished by a fine ~~or imprisonment or both~~ pursuant to Section 8.16.040(a)(1) and 2.01.090 of this Code. Each day that a violation of any of the provisions of this chapter continues to exist shall be deemed a separate and distinct violation.

Amendment of Subsection 18.20.040(1). Subsection 18.20.040(1) of the Gypsum Municipal Code is amended by deleting the stricken text as follows:

- (1) By a fine ~~or imprisonment, or both,~~ pursuant to Sections 18.16.040(a)(1) and 2.01.090 of this Code. Each day that

a violation of any provision of this chapter continues to exist shall be deemed a separate and distinct violation.

Amendment of Subsection 20.05.101(b). Subsection 20.05.101(b) of the Gypsum Municipal Code is amended by deleting the stricken text as follows:

- (b) Any person knowingly engaging in a development in a designated area of state interest or conducting a designated activity of state interest who does not obtain a permit pursuant to these regulations for administration, who does not comply with permit requirements, or who acts outside the authority of the permit, shall be guilty of a misdemeanor and subject to a fine of not more than \$900.00, ~~imprisonment for not more than 90 days, or both.~~