

ORDINANCE 2011-02

AN ORDINANCE REGULATING TRAFFIC IN THE CITY OF FRUITA, COLORADO, BY ADOPTING BY REFERENCE THE 2010 EDITION OF THE “MODEL TRAFFIC CODE FOR COLORADO”; AND AMENDING CHAPTER 10.04 OF THE FRUITA MUNICIPAL CODE IN ORDER TO EFFECTUATE THE PURPOSES OF THIS ORDINANCE.

WHEREAS, the City of Fruita has adopted by reference the Model Traffic Code for Colorado Municipalities, 2003 Edition; and

WHEREAS, the Colorado Department of Transportation (“CDOT”) has revised the Model Traffic Code and promulgated the “Model Traffic Code For Colorado, 2010 Edition;” and

WHEREAS, the City Council is authorized to adopt by reference the Model Traffic Code, 2010 Edition, as provided by Sections 31-16-201, *et seq.*, C.R.S.; and

WHEREAS, the City Council finds and determines that the adoption of the 2010 Model Traffic Code is in the best interest of the public health, safety and welfare of the citizens of Fruita.

THE CITY OF FRUITA HEREBY ORDAINS:

Section 1. That Section 10.04.010 of the Fruita Municipal Code, concerning the model traffic code adopted, is hereby repealed and re-enacted to read as follows:

10.04.010 MODEL TRAFFIC CODE ADOPTED. Pursuant to Parts 1 and 2 of Article 16 of Title 31, C.R.S., as amended, there is hereby adopted by reference the 2010 edition of the “Model Traffic Code for Colorado Municipalities,” promulgated and published as such by the Colorado Department of Transportation (“CDOT”), Safety and Traffic Engineering Branch, 4201 E. Arkansas Avenue, EP 700., Denver, Colorado 80222. The subject matter of the Model Traffic Code relates primarily to comprehensive traffic control regulations for the City. The purposes of this Ordinance and the Code adopted herein is to provide a system of uniform traffic regulations consistent with State law and generally conforming to similar regulations throughout the State and the nation. Not less than one (1) copy of the Model Traffic Code adopted herein is now filed in the office of the Clerk of the City of Fruita, Colorado, and may be inspected during regular business hours. After adoption of the Model Traffic Code, a copy of the Code may be kept in the office of the Chief of Police instead of the City Clerk. The copy of the Model Traffic Code shall be certified by the Mayor and the City Clerk to be a true and correct copy.

Section 2. That Section 10.04.020 of the Fruita Municipal Code, concerning deletions, is hereby amended repealed and re-enacted as follows:

10.04.020 DELETIONS. The 2010 edition of the Model Traffic Code is adopted as if

set out at length save and except the following articles and/or sections which are declared to be inapplicable to this municipality and are therefore expressly deleted:

Part 17, Penalties and Procedure – deleted

Section 3. That Section 10.04.030 of the Fruita Municipal Code, concerning additions and modifications to the Model Traffic Code, is hereby repealed and re-enacted as follows:

10.04.030 ADDITIONS OR MODIFICATIONS.

A. Part 17, Penalties and Procedures, is hereby added to the 2010 Model Traffic Code as adopted by the City of Fruita to read as follows:

1701. Municipalities - traffic offenses classified - schedule of fines.

1. It is a traffic offense for any person to violate any provision of the Code.
2. Pursuant to C.M.C.R. 210 (b)(4), the court may by order, which may from time to time be amended, supplemented, or repealed, designate the traffic offenses, the penalties for which may be paid at the office of the court clerk or violations bureau.
3. The court in addition to any other notice, by published order to be prominently posted in a place where fines are to be paid, shall specify by suitable schedules the amount of fines to be imposed for violations, designating each violation specifically in the schedules. Such fines will be within the limits set by ordinance.
4. Fines and costs shall be paid to, receipted by, and accounted for by the court clerk.
5. If a person receives a penalty assessment notice for a violation under this section 1701 and such person pays the fine for the violation on or before the date the payment is due, the points assessed for violation are reduced as follows:
 - a. For a violation having an assessment of three (3) or more points under Section 42-2-127(5), C.R.S., as amended, the points are reduced by two (2) points;

For a violation having an assessment of two (2) points under Section 42-2-127(5), C.R.S., as amended, the points are reduced by one (1) point.

1703. Parties to a crime. Every person who commits, conspires to commit, or aids or abets in the commission of any act declared in this Code to be a traffic offense, whether individually or in connection with one or more other persons or as principal, agent, or accessory, is guilty of such offense or liable for such offense, and every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, permits, or

directs another to violate any provision of this Code is likewise guilty of such offense or liable for such offense.

1704. Offenses by persons controlling vehicles. It is unlawful for the owner or any other person employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law or this Code.

1706. Juveniles - convicted - arrested and incarcerated - provisions for confinement.

1. Notwithstanding any other provision of law, a child, as defined in section 19-1-103 (18), C.R.S., convicted of a misdemeanor traffic offense under this Code, violating the conditions of probation imposed under this Code, or found in contempt of court in connection with a violation or alleged violation under this article shall not be confined in a jail, lockup, or other place used for the confinement of adult offenders if the court with jurisdiction is located in a county in which there is a juvenile detention facility operated by or under contract with the department of human services that shall receive and provide care for such child or if the jail is located within forty miles of such facility. The court imposing penalties under this section may confine a child for a determinate period of time in a juvenile detention facility operated by or under contract with the department of human services. If a juvenile detention facility operated by or under contract with the department of human services is not located within the county or within forty miles of the jail, a child may be confined for up to forty-eight hours in a jail pursuant to section 19-2-508 (4), C.R.S.
2.
 - a. Notwithstanding any other provision of law, a child, as defined in section 19-1-103 (18), C.R.S., arrested and incarcerated for an alleged misdemeanor traffic offense under this article, and not released on bond, shall be taken before a county judge who has jurisdiction of such offense within forty-eight hours for fixing of bail and conditions of bond pursuant to section 19-2-508 (4)(d), C.R.S. Such child shall not be confined in a jail, lockup, or other place used for the confinement of adult offenders for longer than seventy-two hours, after which the child may be further detained only in a juvenile detention facility operated by or under contract with the department of human services. In calculating time under this subsection 2, Saturdays, Sundays, and court holidays shall be included.
 - b. In any case in which a child is taken before a county judge pursuant to paragraph a of this subsection 2, the child's parent or legal guardian shall immediately be notified by the court in which the county judge sits. Any person so notified by the court under this paragraph b shall comply with the provisions of section 42-4-1716 (4), C.R.S.

1708. Burden of proof - appeals.

1. The burden of proof shall be upon the people, and the court shall enter judgment in favor of the defendant unless the people prove the liability of the defendant beyond a reasonable doubt.
2. Appeals from courts of record shall be in accordance with Rule 37 of the Colorado Rules of Criminal Procedure.

1709. Penalty assessment notice for traffic offenses - violations of provisions by officer - driver's license. Whenever a penalty assessment notice for a traffic infraction is issued the penalty assessment notice which shall be served upon the defendant by the peace officer shall contain the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, a citation of the statute alleged to have been violated, a brief description of the traffic infraction, the date and approximate location thereof, the amount of the penalty prescribed for such traffic infraction, the amount of the surcharge thereon pursuant to section 24-4.2-104 (1), C.R.S., the number of points, if any, prescribed for such traffic infraction pursuant to section 42-2-127, and the date the penalty assessment notice is served on the defendant; shall direct the defendant to appear in a specified county court at a specified time and place in the event such penalty and surcharge thereon is not paid; shall be signed by the peace officer; and shall contain a place for the defendant to elect to execute a signed acknowledgment of liability and an agreement to pay the penalty prescribed and surcharge thereon within twenty days, as well as such other information as may be required by law to constitute such penalty assessment notice to be a summons and complaint, should the prescribed penalty and surcharge thereon not be paid within the time allowed in section 42-4-1701.

1711. Compliance with promise to appear. A written promise to appear in court may be complied with by an appearance by counsel.

1712. Procedure prescribed not exclusive. The foregoing provisions of this Code shall govern all police officers in making arrests without a warrant or issuing citations for violations of this Code, for offenses or infractions committed in their presence, but the procedure prescribed in this Code shall not otherwise be exclusive of any other method prescribed by law or ordinance for the arrest and prosecution of a person for an offense or infraction of like grade.

1713. Conviction record inadmissible in civil action. Except as provided in sections 42-2-201 to 42-2-208, C.R.S., no record of the conviction of any person for any violation of this Code shall be admissible as evidence in any court in any civil action.

1714. Traffic violation not to affect credibility of witness. The conviction of a person upon a charge of violating any provision of this Code or other traffic regulation less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding.

1715. Convictions, judgments, and charges recorded - public inspection.

1. Every judge of a court not of record and every clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of this Code or any other law regulating the operation of vehicles on highways.
2. Within ten days after the entry of a judgment, conviction, or forfeiture of bail of a person upon a charge of violating any provision of this Code or other law regulating the operation of vehicles on highways, the judge or clerk of the court in which the entry of a judgment was made or the conviction was had or bail was forfeited shall prepare and immediately forward to the motor vehicle division of the department of revenue an abstract of the record of said court covering every case in which said person had a judgment entered against him or her, was so convicted, or forfeited bail, which abstract must be certified by the person so required to prepare the same to be true and correct.
3. Said abstract must be made upon a form furnished by the department of revenue and shall include the name, address, and driver's license number of the party charged, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment or whether bail forfeited, and the amount of the fine or forfeiture as the case may be.

1716. Notice to appear or pay fine - failure to appear - penalty.

1. For the purposes of this part 17, tender by an arresting officer of the summons or penalty assessment notice shall constitute notice to the violator to appear in court at the time specified on such summons or to pay the required fine and surcharge thereon.
2. Except as otherwise provided in subsection 3 of this section, a person commits a traffic offense if the person fails to appear to answer any offense other than a traffic infraction charged under this part 17.
3. a. (i) Except as otherwise provided in subparagraph (ii) of this paragraph a, a person who is a parent or legal guardian of a minor under the age of eighteen years and who is required to appear in court with the minor pursuant to the provisions of this part 17 including but not limited to section 1706 (2)(b), shall appear in court at the location and on the date stated in the penalty assessment notice or in the summons and complaint or as instructed by the court.

(ii) The provisions of subparagraph (i) of this paragraph a concerning the appearance of a parent or legal guardian shall not apply in a case where the minor under the age of eighteen years or the parent of the minor demonstrates to the court by clear and convincing evidence that the minor is an emancipated minor.

(iii) For purposes of this subsection 3, "emancipated minor" means a minor under the age of eighteen years who has no legal guardian and whose parents have entirely surrendered the right to the care, custody, and earnings of the minor, no longer are under any duty to support or maintain the minor, and have made no provision for the support of the minor.

- b. A person who violates any provision of paragraph a of subparagraph (i) of this subsection 3 commits a class 1 petty offense and shall be punished pursuant to section 18-1.3-503, C.R.S.

1717. Conviction - attendance at driver improvement school.

1. Except as otherwise provided in subsection 2 of this section, whenever a person has been convicted of violating any provision of this Code or other law regulating the operation of vehicles on streets or highways, the court, in addition to the penalty provided for the violation or as a condition of either the probation or the suspension of all or any portion of any fine or sentence of imprisonment for a violation other than a traffic infraction, may require the defendant, at the defendant's own expense, if any, to attend and satisfactorily complete a course of instruction at any designated driver improvement school located and operating in the county of the defendant's residence and providing instruction in the traffic laws of this state, instruction in recognition of hazardous traffic situations, and instruction in traffic accident prevention. Such school shall be approved by the court.
2. Whenever a minor under eighteen years of age has been convicted of violating any provision of this Code or other law regulating the operation of vehicles on streets or highways, the court may require the minor to attend and satisfactorily complete a course of instruction at any designated driver improvement school providing instruction in the traffic laws of this state, instruction in recognition of hazardous traffic situations, and instruction in traffic accident prevention. The court may impose the driver improvement school requirement in addition to the penalty provided for the violation or as a condition of either the probation or the suspension of all or any portion of any fine or sentence of imprisonment for the violation. The minor, or the minor's parent or parents who appear in court with the minor in accordance with section 1716 3, of this Code, shall pay the cost of attending the designated driver improvement school. The court shall make available information on scholarships and other financial assistance available to help minors or their parents offset the costs of driver improvement school. Such school shall be approved by the court.

- B. Section 1212, Parking-Weight Restrictions, is hereby added to the Model Traffic Code as adopted by the City of Fruita.

1212 Parking - Weight Restrictions - No trucks, truck tractors, semi-trailers, commercial vehicles or motor vehicles exceeding 10,000 pounds gross vehicle weight shall be parked on any street in the City of Fruita; except such parking is permitted only

for the purpose of loading and unloading passengers or freight without delay, and only when such loading does not obstruct, impede or endanger any traffic.

- C. Section 1213 Parking - Size Restrictions, is hereby added to the Model Traffic Code as adopted by the City of Fruita.

1213 Parking-Size Restrictions - No truck type trailer, whatever its empty weight, that is greater than eight feet (8') in width or greater than eighteen feet (18') in length shall be parked on any street in the City of Fruita; except that such parking is permitted only for the purpose of loading or unloading freight and only when such loading or unloading does not obstruct, impeded or endanger any traffic.

- D. Section 1214, Parking - Restrictions on Hazardous Wastes, is hereby added to the Model Traffic Code as adopted by the City of Fruita.

1214 Parking - Restrictions on Hazardous Wastes - No trucks, truck trailers, semi-trailers, commercial vehicles or motor vehicles carrying, containing or transporting any hazardous substance (as defined in Section 42-20-103, C.R.S.) shall park in any residential district of the City of Fruita; except that such parking is permitted in any business district only for the purpose of loading or unloading hazardous substances without delay, and only when such loading and unloading does not obstruct, impede or endanger any traffic.

Section 4: That Section 10.04.040 of the Fruita Municipal Code, concerning penalties, is hereby repealed and re-enacted as follows:

10.04.040 PENALTIES.

A. The following penalties, herewith set forth in full, shall apply to this Chapter. Any person who violates any of the provisions stated or adopted in this Chapter commits a noncriminal municipal offense except any of the following violations which shall constitute a Class B municipal offense:

1. MTC 1101 (1) Speeding and (2) If the alleged violator is accused of exceeding the prima facia speed limit by more than 19 mph;
2. MTC 1101 (3) Special Hazards (if the alleged violation has caused, or contributed to the cause of, an accident resulting in appreciable damage to property of another or an injury or the death to any person);
3. MTC 1105 Speed Contest;
4. MTC 1401 Reckless Driving;
5. MTC 1402 Careless Driving (if the violation has caused, or contributed to the cause of, an accident resulting in appreciable damage to property of

another or an injury or death to any person);

6. MTC 1413 Eluding or Attempting to Elude a Police Officer;
7. MTC 1903 Stopping For School Buses; and
8. Any other offense contained in the Model Traffic Code resulting in an accident causing personal injury or substantial property damage.

B. If a person receives a penalty assessment notice for a violation and such person pays the fine for the violation on or before the date the payment is due, the points assessed for violation are reduced as follows:

1. For a violation having an assessment of three (3) or more points under Section 42-2-127(5), C.R.S., as amended, the points are reduced by two (2) points;
2. For a violation having an assessment of two (2) points under Section 42-2-127(5), C.R.S., as amended, the points are reduced by one (1) point.

Section 5: That Section 10.04.050 of the Fruita Municipal Code, concerning application, is hereby repealed and re-enacted as follows:

10.04.050 APPLICATION. This chapter shall apply to every street, alley, sidewalk area, driveway, park, and to every other public way or public place or public parking area, either within or outside the corporate limits of this municipality, the use of which this municipality has jurisdiction and authority to regulate. The provisions of sections 1401, 1402, 1413, and 1211 of the adopted Model Traffic Code, respectively concerning reckless driving, careless driving, eluding a police officer, and limitations on backing shall apply not only to public places and ways but also throughout this municipality.

Section 6. That Section 10.04.060 of the Fruita Municipal Code, concerning validity, is hereby repealed and re-enacted to read as follows:

10.04.060 VALIDITY. If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts might be declared invalid. The enactment of this Ordinance shall not affect the prosecution of any pending case in the Fruita Municipal Court and any repealed provisions shall remain in effect as to such pending cases

Section 7. That Section 10.04.070 of the Fruita Municipal Code, concerning repeal, is hereby repealed and re-enacted to read as follows:

10.04.070 REPEAL. Any existing or parts of ordinances covering the same matters as

embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

Section 8: That Section 10.040.090 of the Fruita Municipal Code, concerning certification, is hereby repealed and reenacted to read as follows:

10.040.090 CERTIFICATION. The City Clerk shall certify to the passage of this ordinance make not less than three copies of the adopted Code available for inspection by the public during regular business hours.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
THIS _____ DAY OF _____, 2011.**

CITY OF FRUITA, COLORADO

By: _____
H. Kenneth Henry, Mayor

ATTEST:

Margaret Steelman, City Clerk