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ORDINANCE 8637

AN ORDINANCE REPEALING AND REENACTING CHAPTER 10-2.5, "ABATEMENT OF PUBLIC NUISANCES," B.R.C. 1981, EXPANDING THE CITY'S LOCAL NUISANCE LAWS TO REDEFINE PUBLIC NUISANCE AND CREATE A CHRONIC NUISANCE DESIGNATION AND AMENDING CHAPTER 10-3, "RENTAL LICENSES," B.R.C. 1981, TO ALIGN WITH THE CHANGES MADE TO CHAPTER 10-2.5; AND SETTING FORTH RELATED DETAILS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Chapter 10-2.5, "Abatement of Public Nuisances," B.R.C. 1981, is hereby repealed in its entirety and reenacted to read as follows:

Chapter 2.5 - Abatement of Public Nuisance and Chronic Nuisance Property

10-2.5-1. - Legislative Findings and Statement of Purpose.

The City Council of the City of Boulder, Colorado, hereby makes the following legislative findings and determinations of fact:

- (a) The Boulder Revised Code 1981 presently contains various provisions enacted under the police power of the city which are intended to maintain order and promote the health, safety and welfare of the residents of the city.
- (b) Existing code provisions are directed towards the conduct of persons on private property, and are intended to ensure that neither the conduct of such persons, nor the physical condition of such properties, constitutes a public nuisance to other residents in the vicinity of the properties or passers-by on the public rights-of-way.
- (c) Various code provisions, including those pertaining to unreasonable noise, trash, litter, assault, brawling and harassment, can be enforced by the filing of criminal prosecutions against the persons immediately responsible for violations of the same.
- (d) Notwithstanding these enforcement efforts, recurring code violations on parcels of property in the city can result in the creation of public nuisances on such properties which threaten the peace and safety and undermine the quality of life of the residents of the city.
- (e) Public nuisance laws exist under state statute, but such laws are enforceable only in the state courts and not in the municipal court.
- (f) Section 31-15-401(1)(c), C.R.S., authorizes the city to declare and abate public nuisances.

- 1 (g) Section 16-13-302(1), C.R.S., specifically provides that the state public nuisance laws shall
2 not be construed to limit or preempt the powers of any court or political subdivision to
3 abate or control public nuisances.
- 4 (h) It is necessary, desirable and in the public interest to enact a local public nuisance law to
5 eliminate local public nuisances by removing parcels of real property in the city from a
6 condition that either creates an immediate need for abatement to protect the public health,
7 safety, or welfare, or lead to consistent and repeated violations of state or municipal law;
8 make property owners vigilant in preventing public nuisances on or in their property; make
9 property owners responsible for the use of their property by tenants, guests and occupants;
10 provide locally enforceable remedies for violations of local ordinances; and, otherwise
11 deter public nuisances.
- 12 (i) The purpose of this chapter is to enact a local nuisance abatement law that addresses both
13 public nuisances and chronic nuisances. Nuisance violations are intended to provide more
14 robust remedies than typical single violations for particularly egregious acts or to address
15 situations that are continually unaddressed.
- 16 (j) Premises governed by the Colorado Beer Code and Colorado Liquor Code need not be
17 regulated by the provisions of this chapter, because regulations promulgated under Articles
18 3, 4, and 5 of Title 44 of the Colorado Revised Statutes establish adequate local remedies to
19 address recurring disturbances or other activities occurring on such premises which are
20 offensive to the residents of the neighborhood in which such licensed establishments are
21 located.

22 **10-2.5-2. - Definitions.**

23 The following terms used in this chapter have the following meanings unless the context
24 clearly indicates otherwise:

25 *Abate* means to bring to a halt, eliminate or, where that is not possible or feasible, to
suppress, reduce and minimize.

Abatement agreement means a written contract between the city and a person owning or
leasing a property, or their agent, on which there is a public nuisance or that has become a
chronic nuisance property, in which the person agrees to timely take all corrective actions to
abate the public nuisance or chronic nuisance property and to prevent the public nuisance or
chronic nuisance from reoccurring as agreed in the contract. The contract must be reasonable and
contain corrective actions that are legally enforceable. Such corrective actions taken by a person
owning or leasing a property, or their agent, may include, without limitation, and as applicable:

- (1) Issuing a Demand for Compliance;
- (2) Effective tenant screening, leasing, and rule enforcement;
- (3) Implementing physical improvements for crime prevention;
- (4) Providing security for the property;
- (5) Pursuing other remedies available under any lease or other agreement applicable to the property;

- 1 (6) Promptly reporting nuisance activities to law enforcement; and
2 (7) Regular cleaning, maintenance, and repair of the property and the buildings located
3 on it.

4 *Agent* means any person legally authorized to act on behalf of or in place of the owner or
5 lessee of a property, which may include, without limitation, an operator, a person providing
6 property management services, a trustee, conservator, or personal representative.

7 *Chronic nuisance property* means:

- 8 (1) A parcel with a single dwelling unit where five or more public nuisances have
9 occurred within a twelve-month period, beginning August 1 through July 31 of the
10 following year; or
11 (2) A parcel with two dwelling units where seven or more public nuisances have
12 occurred within a twelve-month period, beginning August 1 through July 31 of the
13 following year; or
14 (3) A parcel with three to nine dwelling units where seven or more public nuisances have
15 occurred within a twelve-month period, beginning August 1 through July 31 of the
16 following year;
17 (4) A parcel with ten to ninety-nine dwelling units where fifteen or more public
18 nuisances have occurred within a twelve-month period, beginning August 1 through
19 July 31 of the following year; or
20 (5) A parcel with one hundred or more dwelling units where fifty or more public
21 nuisances have occurred within a twelve-month period, beginning August 1 through
22 July 31 of the following year.

23 For enforcement purposes and in accordance with Section 5-2, "General Provisions,"
24 B.R.C. 1981, each day in which a violation of this chapter occurs constitutes a separate violation
25 remediable through the enforcement provisions of this chapter.

Crime victim means any natural person against whom any crime has been perpetrated or
attempted. Crime victim, for the purposes of determining a public nuisance or a chronic nuisance
property violation, includes, but is not limited to, any request for peace officer protection or any
peace officer intervention in the face of a threat or a perceived threat to person or property, or
any request for the assistance of any peace officer to enforce a court order, including, but not
limited to, circumstances in which the conviction, request for assistance, or other peace officer
intervention arises from an incident relating to domestic violence, dating violence, sexual assault,
child neglect, stalking against any person at or near the premises, or medical emergencies for
serious bodily injury or death.

Leasehold interest means a lessor's or lessee's interest in real property under a verbal or
written lease agreement.

1 *Legal or equitable interest* means every legal and equitable interest, title, estate, tenancy
2 and right of possession recognized by law or equity, including, but not limited to, free-holds, life
3 estates, future interests, condominium rights, timeshare rights, leaseholds, easements, licenses,
4 liens, deeds of trust, contractual rights, mortgages, security interests, and any right or obligation
5 to manage or act as agent or trustee for any person holding any of the foregoing.

6 *Notice of violation* means a written notice advising the owner, known operator, tenant, or
7 occupant of a parcel that the parcel, such persons and other affected persons may be subject to
8 proceedings under this chapter if the remaining number of public nuisance violations needed to
9 declare the parcel a chronic nuisance property under this chapter occur in or on the parcel within
10 the required period of time.

11 *Operator* means any person, firm, partnership, company, corporation or association,
12 including their employees, agents, or contractors, that controls, operates, or manages a parcel(s).

13 *Parcel or property* means any lot or other unit of real property, including, without
14 limitation, individual dwelling units or any combination of contiguous lots or units owned by the
15 same person or persons. The terms *parcel* or *property* exclude homeless shelters run by a
16 homeless service provider or governmental entity.

17 *Public nuisance* means any act or omission that constitutes a violation of the Boulder
18 Revised Code 1981, public health order, or state criminal law occurring or existing on any parcel
19 that creates an unreasonable risk of harm or is injurious to the public health, safety, or welfare or
20 that unreasonably injures, damages, annoys, inconveniences, or disturbs the peace of any
21 member of the public with normal sensitivity with respect to their comfort, health, repose, or
22 safety, or with respect to the free use and comfortable enjoyment of their property, sidewalks,
23 streets, or other public spaces near, upon, and/or around the offending property. Multiple
24 violations committed within any twenty-four-hour period on or in the same parcel constitute
25 separate violations, irrespective of whether the violations are otherwise related to each other by
some underlying unity of purpose or scheme. Violations that are first reported to a peace officer
by a person having an ownership or leasehold interest in the parcel where a violation or
violations have occurred, or having a contractual obligation to manage such parcel, or occupying
such parcel may not be deemed public nuisances under this chapter. Violations of the Boulder
Revised Code 1981 regarding noise, trash and weeds shall create a rebuttable presumption that
such violations are public nuisances. However, this definition of *public nuisance* is subject to the
defenses set forth in subparagraph 10-2.5-17, B.R.C. 1981. It is not necessary that a criminal
prosecution has been initiated to establish that a violation has occurred.

 The term *public nuisance* does not include:

- (1) traffic offenses;
- (2) offenses in which the resident, the owner, the agent, or the operator of a parcel is a
crime victim;
- (3) receipt of false report as defined in Section 5-5-10, "False Reports," B.R.C. 1981,
unless the false information was provided by an occupant or owner of the parcel; and

- 1 (4) a false alarm as defined in Chapter 4-16, "Police Alarm Systems," B.R.C. 1981,
2 unless the false alarm was caused, permitted, or allowed by an occupant or owner of
the parcel in violation of Chapter 16.

3 *Relative* means an individual related as a member of a "family" as "family" is defined in
Section 1-2-1, "Definitions," B.R.C. 1981.

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5 **10-2.5-3. - Owner Responsibility.**

- 6 (a) No person having an ownership or leasehold interest in any parcel, or having a contractual
7 obligation to manage such parcel, or occupying such parcel, shall commit, conduct,
8 promote, facilitate, permit, fail to prevent or otherwise let happen any public nuisance or
chronic nuisance in or on such parcel. Such persons shall abate any such nuisance upon the
parcel and prevent any further violations from occurring on the parcel.
- 9 (b) Any person who has possession or control of a parcel as an owner, lessee, agent, tenant or
10 occupant where any public nuisance or chronic nuisance property activity exists or has
11 occurred shall be presumed under this chapter to be the person causing or allowing the
12 public nuisance or chronic nuisance property activity unless clear and convincing evidence
13 indicate otherwise. Notwithstanding this presumption and any other provision of this
chapter, nothing herein shall be construed to release the owner of a parcel on which there is
14 a public nuisance or that has become a chronic nuisance property from the legal obligations
and responsibilities they have under this chapter and any other laws to prevent their parcel
15 from becoming a public nuisance or chronic nuisance property and to abate any such
activity occurring or existing on their parcel.

16 **10-2.5-4. - Procedures in General.**

- 17 (a) The municipal court is vested with the jurisdiction, duties and powers to hear and decide all
18 cases arising under this chapter, and to provide the remedies specified herein.
- 19 (b) Any civil action commenced pursuant to the provisions of this chapter shall be in the nature
20 of a special statutory proceeding. All issues of fact and law in such civil actions shall be
21 tried to the court without a jury. No equitable defenses may be set up or maintained in any
22 such action except as provided specifically in this chapter. Injunctive remedies under this
chapter may be directed toward the parcel or toward a particular person.
- 23 (c) **Strict Liability.** Public nuisance or chronic nuisance property as defined by this chapter
24 shall be strict liability violations. No culpable mental state shall be required to establish a
public nuisance or chronic nuisance property under this chapter or to obtain court approval
25 for remedies provided by this chapter. However, if a public nuisance is used by the city to
establish the existence of a chronic nuisance property that has not been previously
adjudicated, all of the elements of such public nuisance, including any culpable mental
state required for the commission of such public nuisance, must be established by the city
by a preponderance of the evidence at the trial on the merits of any civil action commenced
pursuant to the provisions of this chapter.

- 1 (d) Burden of Proof. In any criminal proceeding under this chapter, the city shall have the
2 burden of proving beyond a reasonable doubt that any alleged public nuisance or chronic
3 nuisance property activity occurred on the property, including proving all the elements of
4 the offense constituting the public nuisance or chronic nuisance property activity except as
5 hereafter provided.
- 6 (1) In any civil proceeding under this chapter, the city shall have the burden of proving,
7 by a preponderance of the evidence, that any alleged public nuisance or chronic
8 nuisance property activity occurred on the property, including proving all the
9 elements of the offense constituting the public nuisance or chronic nuisance property
10 activity except as hereafter provided.
- 11 (2) However, the city shall not be required in either case to prove that a person was cited,
12 held liable for, or convicted in municipal or any state court for the civil or criminal
13 charge underlying that public nuisance or chronic nuisance property activity. If,
14 however, a person is held liable for or convicted of the civil or criminal charge
15 underlying the alleged public nuisance or chronic nuisance property activity and such
16 decision is final, that decision shall be deemed by the municipal court as conclusive
17 evidence the public nuisance or chronic nuisance property activity occurred and the
18 city need only prove the public nuisance or chronic nuisance property activity
19 occurred on the property.
- 20 (e) Civil proceedings pursuant to the provisions of this chapter shall be governed by Chapter 1-
21 3, "Quasi-Judicial Hearings," B.R.C. 1981, and any rules adopted by the city manager.
- 22 (f) Civil actions pursuant to the provisions of this chapter shall be filed by the office of the city
23 attorney for the city or by such other legal counsel as the city attorney may designate to
24 represent the city.
- 25 (g) In the event that the city pursues any criminal penalties provided in any other section of
this code, any other civil remedies or the remedies of any administrative action, the
remedies in this chapter shall not be delayed or held in abeyance pending the outcome of
any proceedings in the criminal, civil, or administrative action, or any action filed by any
other person, unless all parties to the action initiated pursuant to this chapter agree
otherwise.
- (h) An action brought pursuant to the provisions of this chapter may be consolidated with
another civil action brought pursuant to the provisions of this chapter that involve the same
parcel of real property. However, such actions shall not be consolidated with any other civil
or criminal action except upon the stipulation of all parties. No party may file any
counterclaim, crossclaim, third-party claim, or setoff of any kind in any action pursuant to
the provisions of this chapter.

10-2.5-5. - Notices for Public Nuisance.

- (a) Upon discovering a public nuisance, a peace officer may issue and serve a notice to abate
on the owner, lessee, or agent, as applicable, directing them to remove and abate the
nuisance from the parcel within the time specified in the notice as follows:

- 1 (1) Within twenty-four hours of the issuance of the notice, if the nuisance poses an
2 imminent and substantial risk of damaging other property (including personal
3 property of any other person), injuring an individual, or threatening the public health,
4 safety, or welfare; or
- 5 (2) Within seven days for all other public nuisances, or such longer period of time as the
6 peace officer determines is appropriate, if, based on the facts and circumstances, the
7 nuisance could not reasonably be abated within seven days.
- 8 (b) If the owner, lessee, or agent, as applicable, fails to abate the nuisance within the time
9 stated in the notice to abate, the peace officer may remove or abate the nuisance from the
10 parcel without delay as provided in Section 10-2.5-9, "Abatement Costs – assessment,
11 collection and lien," B.R.C. 1981, or take such other action or actions as are authorized in
12 this chapter.
- 13 (c) The officer may serve the notice to abate by any of the following methods:
- 14 (1) Personal service of the notice to the owner, lessee, or agent, as applicable;
- 15 (2) Mail a copy of the notice by first class mail to the last known address of the owner as
16 reflected in the records of the Boulder County Assessor's Office or the Boulder
17 County Clerk and Recorder's Office;
- 18 (3) Mail a copy of the notice by first class mail to the owner, lessee, or agent at their last
19 known address within the city's records or as found in other publicly available
20 records;
- 21 (4) Email the notice to the owner, lessee, or agent; or
- 22 (5) Post a copy of the notice in a conspicuous place at the entrance of the parcel or
23 entrance of any building on the parcel.
- 24 (d) The notice to abate shall include:
- 25 (1) A description of the public nuisance;
- (2) The date by which the nuisance must be abated;
- (3) A statement that if the nuisance is not abated within the time specified in the notice,
the city may take any enforcement action authorized by the Boulder Revised Code
1981;
- (4) A statement that, if the city abates the nuisance at its cost, it will be entitled to recover
its actual internal and external costs plus interest as provided in Section 10-2.5-9,
"Abatement Costs – assessment, collection and lien," B.R.C. 1981; and
- (5) A statement that, if the city's cost of abatement is not paid, a lien shall attach to the
parcel as provided in Section 10-2.5-9, "Abatement Costs – assessment, collection
and lien," B.R.C. 1981, until such cost and accrued interest is paid in full.

10-2.5-6. - Notices for Chronic Nuisance Property.

No chronic nuisance property abatement action shall be brought forward until the following

1 notice and procedures have been utilized:

- 2 (a) Upon discovery that a parcel will become a chronic nuisance property if one or more
3 violation occurs on the parcel within the requisite time period, a peace officer may issue
4 and serve a written warning notice in the manner provided in subsection (d), of this section.
5 Issuance of this warning shall not be a prerequisite to any proceedings under this chapter.
- 6 (b) Upon discovery that a property has become a chronic nuisance property, a peace officer
7 may issue and serve a notice of chronic nuisance property as provided in subsection (d), of
8 this section.
- 9 (c) The notice of chronic nuisance property is a lawful order. Each directive in the notice is a
10 separate lawful order, and failure to obey any directive is subject to the penalties and costs
11 set forth in this chapter.
- 12 (d) Such written notice shall be deemed sufficient if personally served on the owner of the
13 parcel, sent by email, or sent by first class mail to the owner's address as shown in the
14 records of the Boulder County Assessor's Office or the Boulder County Clerk and
15 Recorder's Office. If the notice is returned as undeliverable, the notice shall be deemed
16 properly served if it is thereafter posted in a conspicuous place on the parcel. The notice
17 shall contain the following information:
- 18 (1) the street address or a legal description sufficient for identification of the parcel and,
19 if the public nuisance occurred at a multi-unit building, the city manager shall identify
20 the unit or units involved, where known;
 - 21 (2) the nature of the nuisances leading to the chronic nuisance notice, including the
22 provision or provisions of the Boulder Revised Code 1981 or any other law or laws
23 that were violated;
 - 24 (3) the dates of the nuisances;
 - 25 (4) a requirement that the property owner respond in writing to the notice within ten days
of the date of the owner's receipt of the notice or date of the posting, whichever is
later;
 - (5) a statement that the owner or an agent of the owner is required to respond in writing,
which must include a written plan to abate the chronic nuisance property and cure
nuisance activities. This requirement is a lawful order and failure of the owner to
provide a written plan to cure nuisance activities and enter into an abatement
agreement as described below in Section 10-2.5-7, "Abatement Agreement for
Chronic Nuisance Property," B.R.C. 1981, could subject the owner to criminal and
civil penalties as provided in this chapter;
 - (6) a warning that, if the owner does not respond, as required, or if the public nuisance is
not voluntarily abated to the satisfaction of the peace officer, or as set forth in Section
10-2.5-7, "Abatement Agreement for Chronic Nuisance Property," B.R.C. 1981, the
city may file a civil or criminal action to abate the property as a public nuisance or a
chronic nuisance property; and
 - (7) a statement that the cost of future enforcement at the parcel as a result of public
nuisance activities shall be billed to the property owner and could become a lien if not

1 paid as provided in Section 10-2.5-9, “Abatement Costs – assessment, collection and
2 lien,” B.R.C. 1981.

- 3 (e) The peace officer may also send copies of the notice to tenants, occupants, known agents,
4 or others, if in the judgment of the city manager, notice to such additional persons will
5 assist in the abatement of public nuisance conditions.
- 6 (f) The notice may be accompanied by educational materials which, in the judgment of the
7 peace officer, will be of assistance to responsible parties in abating and avoiding public
8 nuisance conditions.
- 9 (g) The city attorney may file a chronic nuisance property abatement action immediately and
10 without the notice set forth in this section if accompanied by a sworn statement that a
11 public nuisance posing an immediate threat to public safety is in existence as a result of the
12 condition or use of the parcel in question. For the purposes of this subsection (g), “threat to
13 public safety” shall include only those violations that involve actual or threatened physical
14 violence directed at persons or animals, substantial property damage, or other specific acts
15 that harm or threaten to harm human health or human safety.

16 **10-2.5-7. - Abatement Agreement for Chronic Nuisance Property.**

- 17 (a) An owner issued a notice of chronic nuisance property pursuant to Section 10-2.5-6,
18 “Notices for Chronic Nuisance Property,” B.R.C. 1981, shall, within ten business days of
19 such receipt or date of posting, whichever is later, contact the peace officer who issued the
20 notice or other contact individual designated in the notice and enter into an abatement
21 agreement with the city to eliminate the conditions, behaviors, or activities which constitute
22 the chronic nuisance activity at the parcel.
- 23 (b) If the owner does not timely respond to the notice under subsection (a), of this section, or
24 the owner does timely respond, but the city and owner are unable to agree to an abatement
25 agreement to the satisfaction of the city within thirty days of the date of the notice, the city
may proceed to abate the nuisance activities using any of the processes and remedies
available under the law.
- (c) If the owner fails to comply with any of the terms and conditions of the written abatement
agreement entered into with the city under this section, the city may file a civil action in
municipal court or, if appropriate, Boulder County district court to enforce the abatement
agreement in accordance with its terms and conditions.

26 **10-2.5-8. - Nature of Remedies.**

27 The remedies provided in this chapter shall be either administrative in the form of civil
28 fines or civil injunctive or other relief pursuant to a filed civil abatement action except that
29 violations noted in Section 10-2.5-10, “Criminal Sanctions,” B.R.C. 1981, shall be criminal in
30 nature.

1 **10-2.5-9. - Abatement Costs – assessment, collection and lien.**

- 2 (a) If the city acts under any provision of this chapter to abate a public nuisance or chronic
3 nuisance property, the owner of the parcel shall be liable to the city for the city’s total
4 internal and external costs incurred in the abatement. The city’s internal costs shall be set
5 and assessed under a written schedule of fees approved by the city manager, which fees
6 shall be based on a reasonable estimate of the city’s direct and indirect internal costs to
7 abate a nuisance, as amended from time to time. External costs shall include all amounts
8 the city paid a vendor or contractor to assist in the abatement.
- 9 (b) After the abatement is completed, the city shall send the owner of the parcel an invoice
10 itemizing and totaling the city’s internal and external costs for the abatement. The invoice
11 shall be mailed by first class mail addressed to the owner at the address of the parcel abated
12 and to the last known address of the owner as reflected in the records of the Boulder
13 County Assessor’s Office or the Boulder County Clerk and Recorder’s Office. The invoice
14 may also be mailed by first class mail to any known agent of the owner at its last known
15 address(es) within the city’s records or as found in other publicly available records. The
16 invoice may also be sent by email to the owner or any known agent of the owner. The total
17 costs invoiced shall be paid to the city by the owner or their agent within forty-five days of
18 the date of the invoice. If not paid when due, the total assessed cost shall accrue interest at
19 the rate of eight percent compounded annually.
- 20 (c) The city’s assessed total cost of abatement, as stated in the invoice sent under this section,
21 plus the interest accruing thereon, shall be deemed a perpetual lien imposed upon the parcel
22 from the date such assessed cost became due until paid.
- 23 (d) Any action taken under this section shall be pursuant to Section 2-2-17, “Administrative
24 Fees, Rates and Charges Constitute Lien,” B.R.C. 1981.
- 25 (e) If the offending parcel is not subject to taxation or for any other reason, the city may elect
alternative means to collect the amounts due pursuant to this chapter, including the
commencement of a judicial action at law or in equity, to include, without limitation,
commencement of a civil action in Boulder County district court to judicially foreclose the
lien and, after judgment, pursue such remedies as are provided by law.

19 **10-2.5-10. - Criminal Sanctions.**

20 This section shall apply to public nuisances and chronic nuisance properties.

- 21 (a) No person shall:
- 22 (1) fail to remove and abate the public nuisance from the property within the time
23 specified in the notice to abate after being served as provided in Section 10-2.5-5,
24 “Notices for Public Nuisance,” B.R.C. 1981; or
- 25 (2) fail to obey a notice of chronic nuisance property issued by the city manager under
Section 10-2.5-6, “Notices for Chronic Nuisance Property,” B.R.C. 1981; or
- (3) fail or refuse to abide by a temporary or permanent abatement order issued by the
municipal court under the provisions of this chapter; or

- 1 (4) interfere with or prevent, or attempt to interfere with or prevent, any city employee,
2 or city contractor from abating any such nuisance as authorized under this chapter.
3 (b) Each day's continuation of a violation or failure to comply is deemed a separate offense
4 and prosecutable and punishable as a separate offense.
5 (c) A violation of this section is an offense subject to the penalties of Section 5-2-4, "General
6 Penalties," B.R.C. 1981.

7 **10-2.5-11. - Administrative Remedies.**

8 This section shall apply to public nuisances and chronic nuisance properties.

- 9 (a) No person shall cause, allow, facilitate, or fail to abate a public nuisance from the property
10 within the time specified in the notice to abate as provided in Section 10-2.5-5, "Notices for
11 Public Nuisance," B.R.C. 1981.
12 (b) If a peace officer finds a violation of any provision of this chapter, the city manager, after
13 notice and an opportunity for hearing under the procedures prescribed by Chapter 1-3,
14 "Quasi-Judicial Hearings," B.R.C. 1981, may impose a civil penalty according to the
15 following schedule:
16 (1) For the first infraction at a property, a penalty assessment of two hundred and fifty
17 dollars (\$250);
18 (2) For a second infraction at a property within a one-year period, a penalty assessment
19 of five hundred dollar (\$500);
20 (3) For a third infraction at a property within a one-year period, a penalty assessment of
21 one thousand dollars (\$1,000); and
22 (4) For a fourth and any subsequent infraction at a property within a one-year period, a
23 penalty assessment of two thousand dollars (\$2,000) for each infraction.
24 (c) The city's authority under this section is in addition to any other authority the city has to
25 enforce this chapter, including but not limited to Section 5-2-4, "General Penalties," B.R.C.
1981, and election of one remedy by the city shall not preclude resorting to any other
remedy as well.
(d) Notice under this subsection is sufficient if hand delivered, emailed, mailed, or telephoned
to such person, or by posting in a prominent place on the parcel.
(e) Each and every day during which any public nuisance continues to exist on a property after
the time period for abatement, as stated in the notice to abate, shall be deemed a separate
civil infraction and prosecutable and punishable as a separate infraction for a penalty
assessment under this section.
(f) In establishing the amount of any civil penalty requested, the city may consider, without
limitation, any of the following factors:
(1) The action or inaction taken by the owner to mitigate or correct the nuisance activities
at the property;

- (2) Whether the nuisance activities at the property were repeated or continuous;
- (3) The magnitude or gravity of the nuisance activities;
- (4) The level of cooperation of the owner with the city;
- (5) The cost incurred by the city in investigating and correcting, or attempting to correct, the public nuisance at the property or the chronic nuisance property;
- (6) The disturbance of neighbors; and
- (7) Whether the nuisance activities continued on the property after the city provided the notice to abate under Section 10-2.5-5, "Notices for Public Nuisance," B.R.C. 1981, or the notice of chronic nuisance property under Section 10-2.5-6, "Notices for Chronic Nuisance Property," B.R.C. 1981.

10-2.5-12. - Commencement of Civil Abatement Action to Abate a Public Nuisance or Chronic Nuisance Property.

This section shall apply to public nuisances and chronic nuisance properties.

- (a) In addition to the notices required in Sections 10-2.5-5, "Notices for Public Nuisance," and 10-2.5-6, "Notices for Chronic Nuisance Property," B.R.C. 1981, the following notification is required before filing civil abatement actions:
 - (1) At least ten calendar days before filing a civil action pursuant to the provisions of this chapter, a notice to the owner and occupants of the parcel shall be posted at some prominent place on the parcel. A notice shall also be mailed to the owner and known operator of the parcel, if applicable. The mailing of the notice shall be deemed sufficient if mailed by first class mail to the owner at the address shown of record relating to the parcel in the records of the Boulder County Assessor's Office or the Boulder County Clerk and Recorder's Office. The notice may also be emailed to the owner, any known agents of the owner, and/or the occupants of the parcel. The mailed and, if applicable, emailed notice shall state that the parcel has been identified as the location of an alleged public nuisance or chronic nuisance property and that a civil abatement action pursuant to the provisions of this chapter may be filed.
 - (2) Agents of the city are authorized to enter upon the parcel for the purpose of posting these notices and to affix the notice in any reasonable manner to the outside of buildings and structures.
 - (3) The city shall not be required to post or mail any notice specified herein before filing a civil abatement action if it determines that any of the following conditions exist; however, the city will provide such notice as soon as reasonably possible after filing a civil abatement action, and, if notice has not been provided earlier, shall provide such notice before any fine or other liability is imposed:
 - (A) The nuisance poses an immediate threat to public safety;
 - (B) Notice would jeopardize a pending investigation of criminal or nuisance activity, confidential informants or other police activity; or

1 (C) Any other emergency circumstance exists.

2 (b) A civil abatement action pursuant to the provisions of this chapter shall be commenced by
3 the filing of a complaint verified by an affidavit, which may be accompanied by a motion
4 for a temporary abatement order, through and in the name of the city attorney. However,
5 any complaint filed pursuant to subsection 10-2.5-6(g), B.R.C. 1981, shall include an
6 affidavit or declaration attesting under penalty of perjury to the facts establishing the
7 immediate threat to public safety.

8 (1) The parties-defendants to an action commenced under the provisions of this chapter
9 and the persons liable for the remedies provided by this chapter may include the
10 parcel of real property itself, any person owning or claiming any ownership or
11 leasehold interest in the parcel, all tenants and occupants of the parcel, all managers
12 and agents for any person claiming an ownership or leasehold interest in the parcel,
13 any person committing, conducting, promoting, facilitating or aiding in the
14 commission of a public nuisance, and any other person whose involvement may be
15 necessary to abate the nuisance, prevent it from recurring, or to carry into effect the
16 court's orders. None of these parties shall be deemed necessary or indispensable
17 parties. Any person holding any legal or equitable interest in the parcel who has not
18 been named as a party-defendant may intervene as a party-defendant. No other person
19 may intervene.

20 (2) The parties-defendants shall be served by personal service on the parties-defendants
21 or by first class mail to the parcel owner's address as shown in the records of the
22 Boulder County Assessor's Office or the Boulder County Clerk and Recorder's
23 Office. The notice may be emailed in addition to personal service or first-class mail.
24 If the notice is returned as undeliverable, the notice shall be deemed properly served
25 if it is thereafter posted in a conspicuous place on the parcel.

(3) The complaint and, if applicable, temporary abatement order, shall be served upon the
real property itself by posting copies of the same in a prominent place on the parcel.

17 **10-2.5-13. - Remedies for Civil Abatement Action.**

18 (a) In a civil abatement action, in addition to injunctive relief, or any other remedy available at
19 law, the court may impose a separate civil judgment on every party-defendant who
20 committed, conducted, promoted, facilitated, permitted, failed to prevent or otherwise let
21 happen any public nuisance or chronic nuisance property in or on the parcel that is the
22 subject of the civil action.

23 (b) This civil judgment may also include civil penalties as follows:

24 (1) In the amount of not less than one hundred dollars (\$100) and not more than one
25 thousand dollars (\$1,000) per day, payable to the city, for each day the court finds
that a public nuisance continued to exist on the parcel after the time period for the
required abatement as stated in the notice to abate provided under Section 10-2.5-5,
"Notices for Public Nuisance," B.R.C. 1981; or for each day the court finds the
property continued to exist as a chronic nuisance property either, (A) after the
property owner failed to timely respond to the notice of chronic nuisance property as

1 provided in Section 10-2.5-6, "Notices for Chronic Nuisance Property," B.R.C. 1981;
2 or (B) if the owner did timely respond but the city did not approve the submitted
3 abatement agreement as provided in Section 10-2.5-7, "Abatement Agreement for
4 Chronic Nuisance Property," B.R.C. 1981.

(2) In establishing the amount of any civil penalty requested, the municipal court may
5 consider, without limitation, any of the following factors:

- 6 (A) The action or inaction taken by the owner to mitigate or correct the nuisance
7 activities at the property;
- 8 (B) Whether the nuisance activities at the property were repeated or continuous;
- 9 (C) The magnitude or gravity of the nuisance activities;
- 10 (D) The level of cooperation of the owner with the city;
- 11 (E) The cost incurred by the city in investigating and correcting, or attempting to
12 correct, the public nuisance at the property or the chronic nuisance property;
- 13 (F) The disturbance of neighbors; and
- 14 (G) Whether the nuisance activities continued on the property after the city
15 provided the notice to abate under Section 10-2.5-5, "Notices for Public
16 Nuisance," B.R.C. 1981, or the notice of chronic nuisance property under
17 Section 10-2.5-6, "Notices for Chronic Nuisance Property," B.R.C. 1981.

18 **10-2.5-14. - Supplementary Remedies for Public Nuisance and Chronic Nuisance Property.**

19 In any action filed under the provisions of this chapter, in the event that any one of the
20 parties-defendants fails, neglects or refuses to comply with an order of the court, the court may,
21 upon the motion of the city, in addition to or in the alternative to the remedy of contempt and the
22 possibility of criminal prosecution, permit the city to enter upon the parcel of real property and
23 abate the nuisance, take steps to prevent nuisances from occurring, or perform other acts required
24 of the parties-defendants in the court's orders. In addition, the court may order the parties-
25 defendants to pay for the costs incurred in abating the nuisance as set forth in Section 10-2.5-9,
"Abatement Costs – assessment, collection and lien," B.R.C. 1981.

20 **10-2.5-15. - Stipulated Alternative Remedies.**

- 21 (a) The city and any party-defendant to an action pursuant to the provisions of this chapter may
22 voluntarily stipulate orders and remedies, temporary or permanent, that are different from
23 those provided in this chapter.
- 24 (b) The court shall make such stipulations for alternative remedies an order of the court and
25 shall be enforceable as an order of the court.

24 **10-2.5-16. - Remedies Under Other Laws Unaffected.**

25 Nothing in this chapter shall be construed as limiting or forbidding the city or any other

1 person from pursuing any other remedies available at law or in equity, or requiring that evidence
2 or property seized, confiscated, closed, forfeited or destroyed under other provisions of law be
3 subjected to the special remedies and procedures provided in this chapter.

4 **10-2.5-17. - Effect of Abatement Efforts; Defense to Action.**

5 (a) If a person named as a party-defendant is the owner of a parcel of real property and is
6 leasing the parcel to one or more tenants, or the person named has been hired by the owner
7 of the parcel to manage and lease the parcel, and public nuisances were committed by one
8 or more of the tenants or occupants of the parcel, it shall be a defense to an action pursuant
9 to the provisions of this chapter that said person has:

10 (1) evicted, or attempted to evict by commencing and pursuing with due diligence
11 appropriate court proceedings, all of the tenants and occupants of the parcel that
12 committed each of the alleged public nuisance or the chronic public nuisance
13 property; or

14 (2) posted a Demand for Compliance and, if the public nuisance or chronic nuisance has
15 not been abated within thirty days, evicted, or attempted to evict by commencing and
16 pursuing with due diligence appropriate court proceedings, all of the tenants and
17 occupants of the parcel that committed each of the alleged public nuisance or the
18 chronic public nuisance property.

19 (b) The defenses in subsection (a), of this section, shall only be available to any person if they
20 have also undertaken reasonable means to abate similar violations on the parcel by the
21 tenants or occupants of the parcel.

22 (c) The defenses in subsection (a), of this section, shall not be available to any person who
23 fails to enter into an abatement agreement with the city to eliminate the conditions,
24 behaviors, or activities which constitute the nuisance activity at the parcel prior to the filing
25 of a nuisance abatement action.

(d) If a person named as a party-defendant is the owner of a parcel of real property and is
leasing the parcel to one or more tenants, or the person named has been hired by the owner
of the parcel to manage and lease the parcel, and public nuisances were committed by one
or more person(s) with a documented Court Order or Affidavit of Trespass to not enter the
property, it shall be a defense to an action pursuant to the provisions of this chapter.

(e) If, in the judgment of the city manager, a person who has received a notice of violation has
established sufficient grounds to assert a defense to an action under subsection (a), of this
section, the public nuisance which was the subject of the notice of violation shall no longer
be considered a violation within the meaning of this chapter. Nothing herein shall be
construed to prohibit the introduction of evidence of said public nuisance at a subsequent
court proceeding, if a public nuisance or chronic nuisance property action is commenced on
the basis of additional public nuisances, for the purpose of determining whether the
defendants named in such action have undertaken and pursued with due diligence
reasonable means to avoid a recurrence of similar violations on the parcel of real property
by the present and future tenants or occupants of the parcel.

1 (f) Except as provided in subsection (a), of this section, the fact that a party-defendant took
2 steps to abate the nuisance or chronic nuisance property after receiving the notice of its
3 existence does not constitute a defense to an action brought pursuant to the provisions of
4 this chapter.

4 **10-2.5-18. - Abatement Orders.**

5 (a) Issuance and Effect of Temporary and Permanent Abatement Orders on public nuisance
6 and chronic nuisance property in a civil abatement action. The issuance of temporary or
7 permanent abatement orders under this chapter shall be governed by the provisions of Rule
8 65 of the Colorado Rules of Civil Procedure pertaining to temporary restraining orders,
9 preliminary injunctions and permanent injunctions, except to the extent of any
10 inconsistency with the provisions of this chapter, in which event the provisions of this
11 chapter shall prevail. Temporary abatement orders provided for in this chapter shall go into
12 effect immediately when served upon the property or party against whom they are directed.
13 Permanent abatement orders shall go into effect as determined by the court. No bond or
14 other security shall be required of the city.

15 (b) Form and Scope of Abatement Orders. Every abatement order under this chapter shall set
16 forth the reasons for its issuance; shall be reasonably specific in its terms; shall describe in
17 reasonable detail the acts and conditions authorized, required or prohibited; and shall be
18 binding upon the parcel, the parties to the action, agents and employees and any other
19 person named as a party-defendant in the civil abatement action and served with a copy of
20 the order.

21 (c) Substance of Abatement Orders. Temporary or permanent abatement orders entered
22 pursuant to the provisions of this chapter shall be narrowly tailored to address the particular
23 nuisance. Such orders may include, but are not limited to:

- 24 (1) requiring any parties-defendants to take steps to abate the nuisance;
- 25 (2) authorizing the city manager to take reasonable steps to abate the public nuisance or
chronic nuisance property and prevent it from recurring, considering the nature and
extent of the public nuisance;
- (3) requiring certain named individuals to stay away from the parcel at all times or for
some specific period of time;
- (4) issuing any order that is reasonably necessary to access, maintain or safeguard the
parcel; and
- (5) issuing any order that is reasonably necessary for the purposes of abating or
preventing the public nuisance or chronic nuisance property from occurring or
recurring; provided, however, that no such order shall require the seizure of, the
forfeiture of title to, or the temporary or permanent closure of a parcel or the
appointment of a special receiver to protect, possess, maintain, or operate a parcel.

(d) Temporary Abatement Orders.

- (1) The purpose of a temporary abatement order shall be to temporarily abate an alleged

1 public nuisance or chronic nuisance property pending the final determination of a
2 civil abatement action. A temporary abatement order may be issued by the court
3 pursuant to the provisions of this section even if the effect of such order is to change,
4 rather than preserve, the status quo.

5 (2) At any hearing on a motion for a temporary abatement order, the city shall have the
6 burden of proving that there are reasonable grounds to believe that a public nuisance
7 or chronic nuisance property occurred in or on the parcel and, in the case of a
8 temporary order granted without notice to the parties-defendants, that such order is
9 reasonably necessary to avoid some immediate, irreparable loss, damage or injury. In
10 determining whether there are such reasonable grounds, the court may consider
11 whether an affirmative defense may exist under any of the provisions of this chapter.

12 (3) At any hearing on a motion for a temporary abatement order or a motion to vacate or
13 modify a temporary abatement order, the court shall temper the rules of evidence and
14 admit hearsay evidence unless the court finds that such evidence is not reasonably
15 reliable and trustworthy. The court may also consider the facts alleged in the verified
16 complaint or in any affidavit submitted in support of the complaint or motion for
17 temporary abatement order.

18 (e) Permanent Abatement Orders.

19 (1) At the trial on the merits of a civil abatement action commenced under this chapter,
20 the city shall have the burden of proving by a preponderance of the evidence that a
21 public nuisance or chronic nuisance property occurred on or in the parcel identified in
22 the complaint. At such a trial, the city must also prove, by a preponderance of the
23 evidence, any public nuisances asserted as grounds for the civil action that have not
24 been previously adjudicated. The Colorado Rules of Evidence shall govern the
25 introduction of evidence at all such trials.

(2) Where the existence of a public nuisance or chronic nuisance property is established
in a civil abatement action pursuant to the provisions of this chapter after a trial on the
merits, the court shall enter a permanent abatement order requiring the parties-
defendants to abate the public nuisance or chronic nuisance property and take specific
steps to prevent the same and other nuisances from occurring or recurring on the
parcel or in using the parcel.

(f) Violation of Abatement Order.

(1) No person shall fail to comply with any abatement order issued pursuant to the
provisions of this chapter. Each day that a person is in violation of any such
abatement order shall constitute a separate violation of these provisions.

(2) Whether or not a prosecution is brought pursuant to subparagraph (f)(1), above, the
municipal court shall retain full authority to enforce its abatement orders by the use of
its contempt powers. In a contempt proceeding brought as a result of the violation of
an abatement order issued pursuant to this chapter, the municipal court may, in its
discretion, treat each day during which a party is in violation of an abatement order as
a separate act of contempt.

1 **10-2.5-19. - Motion to Vacate or Modify Temporary Abatement Orders.**

- 2 (a) Timing of Motion to Vacate Temporary Order. At any time a temporary abatement order is
3 in effect, any party-defendant or any person holding any legal or equitable interest in any
4 parcel governed by such an order may file a motion to vacate or modify said order. Any
5 motion filed under this subsection (a) shall state specifically the factual and legal grounds
6 upon which it is based, and only those grounds may be considered at a hearing.
- 7 (b) Standard of Proof for Vacation of Temporary Order. The court shall vacate the order if it
8 finds by a preponderance of the evidence that there are no reasonable grounds to believe
9 that a public nuisance or chronic nuisance was committed in or on the parcel. The court
10 may modify the order if it finds by a preponderance of the evidence that such modification
11 will not be detrimental to the public interest and is appropriate, considering the nature and
12 extent of the public nuisances.
- 13 (c) Continuance of Hearing. The court shall not grant a continuance of any hearing set under
14 this section unless all the parties so stipulate.
- 15 (d) Consolidation of Hearing with Other Proceedings. If all parties consent, the court may
16 order a trial on the merits to be advanced and tried with the hearing on these motions.

17 **10-2.5-20. - Limitation of Actions.**

18 Actions pursuant to the provisions of this chapter shall be filed no later than one year after
19 the public nuisance or chronic nuisance property incident that serves as the basis for the bringing
20 of an action pursuant to this chapter. Actions concerning a chronic nuisance property shall be
21 commenced no later than one year after: (1) the last nuisance activity occurs that causes the
22 parcel to be a chronic nuisance property; or (2) the notice of chronic nuisance property is served,
23 whichever is later. This limitation shall not be construed to limit the introduction of evidence of
24 any other public nuisance violations that occurred more than one year before the filing of the
25 complaint for the purpose of establishing the existence of a public nuisance or chronic nuisance
property or when relevant for any other purpose.

18 **10-2.5-21. - Effect of Property Conveyance.**

19 When title to a parcel is conveyed from one person to another, any public nuisances
20 existing at the time of the conveyance which could be used under this chapter to prove that a
21 public nuisance or chronic nuisance property exists with respect to such parcel, shall not be so
22 used unless a reason for the conveyance was to avoid the parcel being declared a public nuisance
23 or chronic nuisance property pursuant to the provisions of this chapter. It shall be a rebuttable
24 presumption that a reason for the conveyance of the parcel was to avoid the parcel from being
25 declared a public nuisance or chronic nuisance property pursuant to the provisions of this chapter
if:

- 23 (1) the parcel was conveyed for less than fair market value;
- 24 (2) the parcel was conveyed to an entity or entities controlled directly or indirectly by the
25 person conveying the parcel including but not limited to, any occupants, operators,
owners, or other tenants; or

1 (3) the parcel was conveyed to a relative of the person conveying the parcel.

2 **10-2.5-22. - Attorney's Fees.**

- 3 (a) Other than as specifically provided by this section, attorney's fees shall not be awarded to
4 any party in a civil abatement proceeding brought pursuant to the provisions of this chapter.
- 5 (b) Attorney's fees may be awarded at the discretion of the court under the following
6 circumstances:
- 7 (1) Where there has been a judicial finding of the existence of a chronic nuisance
8 property, as defined by the provisions of this chapter, whether such finding is made at
9 trial or as part of a settlement in advance of a trial; and
 - 10 (2) When the party found to be responsible for the chronic nuisance property failed to
11 submit an abatement agreement pursuant to subsection 10-2.5-7(a), B.R.C. 1981.

12 **10-2.5-23. - City Manager Rules.**

13 The city manager is authorized to adopt rules and regulations necessary to interpret, further
14 define or implement the provisions of this chapter.

15 ~~Chapter 2.5 Abatement of Public Nuisances.~~

16 ~~10-2.5-1. Legislative Findings and Statement of Purpose.~~

17 ~~The city council of the City of Boulder, Colorado, hereby makes the following legislative
18 findings and determinations of fact:~~

- 19 ~~(a) The Boulder Revised Code presently contains various provisions enacted under the police
20 power of the city which are intended to maintain order and promote the health, safety and
21 welfare of the residents of the city.~~
- 22 ~~(b) Existing code provisions are directed towards the conduct of persons on private property,
23 and are intended to ensure that neither the conduct of such persons, nor the physical
24 condition of such properties, constitutes a nuisance to other residents in the vicinity of the
25 properties or passers-by on the public rights-of-way.~~
- 26 ~~(c) Various code provisions, including those pertaining to unreasonable noise, trash, litter,
27 assault, brawling and harassment, are enforced by the filing of criminal prosecutions
28 against the persons immediately responsible for violations of the same.~~
- 29 ~~(d) Notwithstanding these enforcement efforts, recurring code violations on parcels of
30 property in the city can result in the creation of public nuisances on such properties which
31 seriously threaten the peace and safety of neighboring residents and undermine the
32 quality of life of the residents of the city.~~
- 33 ~~(e) Public nuisance laws exist under the state statutes, but such laws are enforceable only in
34 the state courts and not in the municipal court.~~

1 (f) ~~Section 31-15-401(1)(e), C.R.S., authorizes the city to declare and abate public~~
2 ~~nuisances.~~

3 (g) ~~Section 16-13-302(1), C.R.S., specifically provides that the state public nuisance laws~~
4 ~~shall not be construed to limit or preempt the powers of any court or political subdivision~~
5 ~~to abate or control nuisances.~~

6 (h) ~~It is necessary and desirable in the public interest to enact a local public nuisance law in~~
7 ~~order to: eliminate local public nuisances by removing parcels of real property in the city~~
8 ~~from a condition that consistently and repeatedly violates municipal law; make property~~
9 ~~owners vigilant in preventing public nuisances on or in their property; make property~~
10 ~~owners responsible for the use of their property by tenants, guests and occupants; provide~~
11 ~~locally enforceable remedies for violations of local ordinances; and otherwise deter~~
12 ~~public nuisances.~~

13 (i) ~~The purpose of this chapter is to enact such a local public nuisance law.~~

14 (j) ~~Premises governed by the Colorado Beer Code and Colorado Liquor Code need not be~~
15 ~~regulated by the provisions of this chapter, because regulations promulgated under~~
16 ~~articles 46, 47 and 48 of title 12 of the Colorado Revised Statutes establish adequate local~~
17 ~~remedies to address recurring disturbances or other activities occurring on such premises~~
18 ~~which are offensive to the residents of the neighborhood in which such licensed~~
19 ~~establishments are located.~~

20 **10-2.5-2. Definitions.**

21 ~~The following terms used in this chapter have the following meanings unless the context~~
22 ~~clearly indicates otherwise:~~

23 ~~Abate means to bring to a halt, eliminate or, where that is not possible or feasible, to~~
24 ~~suppress, reduce and minimize.~~

25 ~~Leasehold interest means a lessor's or lessee's interest in real property under a verbal or~~
~~written lease agreement.~~

~~Legal or equitable interest means every legal and equitable interest, title, estate, tenancy~~
~~and right of possession recognized by law or equity, including, but not limited to, free holds, life~~
~~estates, future interests, condominium rights, timeshare rights, leaseholds, easements, licenses,~~
~~liens, deeds of trust, contractual rights, mortgages, security interests and any right or obligation~~
~~to manage or act as agent or trustee for any person holding any of the foregoing.~~

~~Notice of violation means a written notice advising the owner and tenant or occupant of a~~
~~parcel that the parcel, such persons and other affected persons may be subject to proceedings~~
~~under this chapter if the remaining number of separate violations needed to declare the parcel a~~
~~public nuisance under this chapter occur in or on the parcel within the required period of time.~~
~~Such written notice shall be deemed sufficient if sent by first class mail or certified mail to the~~
~~parcel, addressed to the owner by name and to all tenants and occupants and to the owner by~~
~~name at any different address of the owner as shown in the records of the Boulder County~~
~~Assessor or of the Boulder County Clerk and Recorder. Each notice of violation shall be limited~~
~~to one separate date or range of dates of violation. Although each notice of violation may list a~~
~~number of specific code violations on a particular date or range of dates, it shall count as notice~~

1 of a single violation for the purpose of establishing the separate violations needed to declare the
2 parcel a public nuisance.

3 Ownership interest means a fee interest in title to real property.

4 Parcel means any lot or other unit of real property, including, without limitation,
5 individual apartment units or any combination of contiguous lots or units owned by the same
6 person or persons.

7 Public nuisance means the condition or use of any parcel on or in which two or more
8 separate violations have occurred within the preceding twelve month period between August 1
9 and continuing through July 31 of each year or three or more separate violations have occurred
10 within any period of twenty four consecutive months, if, during each such violation, the conduct
11 of the person committing the violation was such as to annoy residents in the vicinity of the parcel
12 or of passers by on the public streets, sidewalks and rights of way in the vicinity of the parcel.
13 However, this definition of "public nuisance" is subject to the defenses set forth in paragraph 10-
14 2.5 8(a)(2), B.R.C. 1981. Also, a public nuisance is not established when the only person
15 annoyed is a law enforcement officer engaged in carrying out official duties.

16 Relative means an individual related as a member of a "family" as "family" is defined in
17 Section 1-2-1, "Definitions," B.R.C. 1981.

18 Separate violation means any act or omission that constitutes a violation of the Boulder
19 Revised Code, or state criminal law with the exception of traffic offenses and offenses in which
20 the resident of the parcel is a crime victim, provided that: an ongoing and uninterrupted violation
21 shall be deemed to have been committed only on the last day during which all the necessary
22 elements of the violation existed; multiple violations committed within any twenty four hour
23 period of time on or in the same parcel shall be considered a single separate violation,
24 irrespective of whether the violations are otherwise related to each other by some underlying
25 unity of purpose or scheme; and violations that are first reported to a city police or code
enforcement officer by a person having an ownership or leasehold interest in any parcel, or
having a contractual obligation to manage such parcel, or occupying such parcel shall not be
deemed violations under this chapter. It is not necessary that a criminal prosecution has been
initiated in order to establish that a violation has occurred.

18 **10-2.5-3. Nature of Remedies.**

19 The remedies provided in this chapter shall be civil and remedial in nature except that, if
20 any person knowingly fails or refuses to abide by a temporary or permanent abatement order
21 issued by the municipal court under the provisions of this chapter, such person shall be guilty of
22 a misdemeanor.

21 **10-2.5-4. Nuisance Prohibited.**

22 No person having an ownership or leasehold interest in any parcel, or having a
23 contractual obligation to manage such parcel, or occupying such parcel, shall commit, conduct,
24 promote, facilitate, permit, fail to prevent or otherwise let happen, any public nuisance in or on
25 such parcel. Such persons shall abate any public nuisance upon the parcel and prevent any public
nuisance from occurring on the parcel.

1 **10-2.5-5. Procedures in General.**

2 (a) ~~The municipal court is vested with the jurisdiction, duties and powers to hear and decide all causes arising under this chapter, and to provide the remedies specified herein.~~

3 (b) ~~Any civil action commenced pursuant to the provisions of this chapter shall be in the nature of a special statutory proceeding. All issues of fact and law in such civil actions shall be tried to the court without a jury. No equitable defenses may be set up or maintained in any such action except as provided specifically in this chapter. Injunctive remedies under this chapter may be directed toward the parcel or toward a particular person.~~

6 (c) ~~Public nuisances as defined by this chapter shall be strict liability violations. No culpable mental state shall be required to establish a public nuisance under this chapter or to obtain court approval for remedies provided by this chapter. However, if a separate violation is used by the city to establish the existence of a public nuisance that has not been previously adjudicated, all of the elements of such separate violation, including any culpable mental state required for the commission of such separate violation, must be established by the city by a preponderance of the evidence at the trial on the merits of any civil action commenced pursuant to the provisions of this chapter.~~

11 (d) ~~Proceedings pursuant to the provisions of this chapter shall generally be governed by the Colorado Rules of County Court Civil Procedure unless this chapter provides a more specific rule, provided, however, that with respect to the rules related to injunctions, Rule 65 of the Colorado Rules of Civil Procedure shall control rather than Rule 365 of the Colorado Rules of County Court Civil Procedure. Where this chapter, the Colorado Rules of Civil Procedure or the Colorado Rules of County Court Civil Procedure fail to state a rule of decision, the court shall first look to the Public Nuisance Abatement Act, § 16-13-301, et seq., C.R.S., and the cases decided thereunder.~~

16 (e) ~~Actions pursuant to the provisions of this chapter shall be filed by the office of the city attorney for the city or by such other legal council as the city attorney may designate to represent the city.~~

18 (f) ~~In the event that the city pursues any criminal penalties provided in any other section of this code, any other civil remedies or the remedies of any administrative action, the remedies in this chapter shall not be delayed or held in abeyance pending the outcome of any proceedings in the criminal, civil or administrative action, or any action filed by any other person, unless all parties to the action initiated pursuant to this chapter agree otherwise.~~

21 (g) ~~An action brought pursuant to the provisions of this chapter may be consolidated with another civil action brought pursuant to the provisions of this chapter that involves the same parcel of real property. However, such actions shall not be consolidated with any other civil or criminal action except upon the stipulation of all parties. No party may file any counterclaim, cross claim, third party claim or setoff of any kind in any action pursuant to the provisions of this chapter.~~

24

25

1 **10-2.5-6. Required Procedures Prior to Commencement of Public Nuisance Action.**

2 (a) ~~No action shall be brought pursuant to the provisions of this chapter until the following procedures have been utilized:~~

3 (1) ~~Following the first violation that serves as the basis for a nuisance abatement~~
4 ~~action, written notice of violation shall be given by the city manager to the owner~~
5 ~~of the parcel at which the nuisance conditions occurred.~~

6 (A) ~~The notice shall be personally served upon the owner or served by~~
7 ~~certified mail to the parcel, addressed to the owner by name, mailed to the~~
8 ~~owner by name at any different address of the owner as shown in the~~
9 ~~records of the Boulder County Assessor or of the Boulder County Clerk~~
10 ~~and Recorder. Personal service or service by mail shall be given no later~~
11 ~~than thirty days following the date of the violation.~~

12 (B) ~~The notice shall specify the nature of the nuisance, the date or dates of the~~
13 ~~nuisance and the provision of the Boulder Revised Code that was violated.~~
14 ~~When a nuisance occurred at a multi-unit building, the city manager shall~~
15 ~~identify the unit or units involved in the problem.~~

16 (C) ~~The city manager shall also send copies of the notice to tenants or others~~
17 ~~if, in the judgment of the city manager, notice to such additional persons~~
18 ~~will assist in abatement of nuisance conditions.~~

19 (D) ~~The notice may be accompanied by educational materials which, in the~~
20 ~~judgment of the city manager, will be of assistance to responsible parties~~
21 ~~in abating and avoiding nuisance conditions.~~

22 (E) ~~No notice shall be given pursuant to this provision, nor shall any event be~~
23 ~~utilized as a "first incident" for the purpose of bringing a nuisance~~
24 ~~abatement action, unless the city manager determines that such incident~~
25 ~~properly could serve as the basis of the filing of a criminal case in~~
~~municipal court.~~

(2) ~~Following a second violation within a twelve-month period, or a third violation~~
~~within a twenty-four month period, but prior to the filing of a nuisance abatement~~
~~action based upon those violations, the city manager shall schedule a settlement~~
~~meeting involving all persons who will be named as party-defendants in any~~
~~nuisance abatement proceeding based upon those incidents.~~

(A) ~~No meeting shall be set up based upon any incident unless the city~~
~~manager, in the exercise of due diligence, determines that there is~~
~~reasonable cause to believe that a violation or problem that could trigger~~
~~the nuisance abatement process has occurred.~~

(B) ~~Notice of the meeting may be given by personal service, by first class mail~~
~~confirmed by a telephonic communication with the person to whom notice~~
~~is provided, or by any other means so long as it can be established that~~
~~notice of the meeting was actually received by the party to whom such~~
~~notice was provided. Notice shall be provided within thirty days of the~~
~~date of the final violation that serves as the basis for the meeting.~~

1 (C) — Landlords, tenants, residents and others whose corrective action is deemed
2 necessary by the city manager in order to resolve nuisance conditions will
3 be asked to attend the settlement meeting. Owners of rental properties may
4 participate in such meetings through representatives legally authorized to
5 enter into voluntary compliance agreements on behalf of those owners.

6 (D) — Neighbors, victims and others may also be invited to attend such meetings.
7 However, attendance of such persons will not be required. When victims
8 and impacted neighbors do not choose to attend such meetings, the city
9 manager will attempt to determine the impact of nuisance conditions upon
10 such persons and present that information at the meeting.

11 (E) — The scheduling, location and format of settlement meetings will be
12 determined by the city manager in a manner that the city manager believes
13 will be best suited resolving the problem. The city manager may utilize
14 mediators, facilitators and other experts (including community volunteers)
15 to assist in the resolution of the problem.

16 (F) — The desired outcome of the settlement meeting will be to obtain a
17 voluntary compliance agreement, in which relevant parties agree to take
18 corrective action to abate and avoid nuisance conditions.

19 (G) — If no voluntary compliance agreement is achieved or, if such agreement is
20 achieved and thereafter the city manager determines that a party has failed
21 to comply with the terms of such agreement to the city manager's sole
22 satisfaction, or if an owner fails to attend a scheduled settlement meeting
23 to which they have been invited, the matter may be referred to the city
24 attorney for evaluation and potential filing of a nuisance abatement action.
25 Proof of violation of the voluntary compliance agreement shall not be
 required to establish the existence of a public nuisance.

(b) — Upon receipt of a referral for nuisance abatement, the city attorney shall evaluate the case
and determine whether or not to initiate a court action. In evaluating such a case, the city
attorney may consider, without limitation, the following factors:

(1) — The level of cooperation of potential parties in attempting to resolve issues;

(2) — The level of disturbance associated with the violations and the impact of those
violations upon neighbors or other victims;

(3) — The degree to which potential parties to the nuisance abatement action have taken
reasonable steps to try and resolve the problem;

(4) — The existence or nonexistence of prior cases or incidents in which potential
parties to a nuisance abatement action have been involved and the nature of that
involvement;

(5) — The percentage of units in a multi-unit housing context in which problems have
occurred;

(6) — The existence or nonexistence, within a multi-unit housing context, of a
condominium association or other internal governing body or management

1 structure that might provide an avenue for relief of the problem and the
2 probability that such governing body or management structure will be able to
resolve the problem;

3 (7) ~~The existence of any equitable, factual, legal, ethical or other consideration of the~~
4 ~~type that would normally be considered by an attorney when deciding whether or~~
~~not to file a civil action;~~

5 (8) ~~The availability of resources required for the prosecution of the potential case;~~

6 (9) ~~The availability of any other enforcement tools that might be better suited to~~
7 ~~resolution of the particular problem; and~~

8 (10) ~~The probability of prevailing at a trial on the matter.~~

9 (e) ~~Notwithstanding the settlement meeting and case evaluation procedures described in~~
10 ~~subsections (a)(2) and (b) above, the city manager may request that the city attorney file a~~
11 ~~nuisance abatement action immediately if, in the city manager's judgment, facts exist to~~
12 ~~support a sworn statement that a public nuisance posing an immediate threat to the public~~
13 ~~safety is in existence as a result of the condition or use of parcel in question. The city~~
14 ~~attorney shall file such an action only if he or she concurs with the city manager's request.~~
15 ~~The city manager and city attorney may consult with the city council on such actions. For~~
16 ~~the purposes of this subsection (e), threat to the public safety shall include only those~~
17 ~~violations that involve actual or threatened physical violence directed at persons or~~
18 ~~animals, substantial property damage or other specific acts that harm or threaten to harm~~
19 ~~human health or human safety.~~

14 **10-2.5-7. Commencement of Public Nuisance Actions; Prior Notification.**

15 (a) ~~Notification is required before filing civil actions pursuant to the provisions of this~~
16 ~~chapter as follows:~~

17 (1) ~~At least ten calendar days before filing a civil action pursuant to the provisions of~~
18 ~~this chapter, a notice to the owner and occupants of the parcel shall be posted at~~
19 ~~some prominent place on the parcel. A notice shall also be mailed to the owner of~~
20 ~~the parcel. The mailing of the notice shall be deemed sufficient if mailed by~~
21 ~~certified mail to the owner at the address shown of record relating to the parcel for~~
22 ~~such owner in the records of the Boulder County Assessor. The posted and mailed~~
23 ~~notices shall state that the parcel has been identified as the location of an alleged~~
24 ~~public nuisance and that a civil action pursuant to the provisions of this chapter~~
25 ~~may be filed.~~

(2) ~~Agents of the city are authorized to enter upon the parcel for the purpose of~~
~~posting these notices and to affix the notice in any reasonable manner to buildings~~
~~and structures.~~

(3) ~~The city shall not be required to post or mail any notice specified herein before~~
~~filing a civil action if it determines that any of the following conditions exist;~~
~~however, the city will provide such notice as soon as reasonable possible after~~
~~filing a civil action, and, if notice has not been provided earlier, shall provide such~~
~~notice before any fine or other liability is imposed:~~

1 (A) — ~~The public nuisance poses an immediate threat to public safety;~~

2 (B) — ~~Notice would jeopardize a pending investigation of criminal or public
nuisance activity, confidential informants or other police activity; or~~

3 (C) — ~~Any other emergency circumstance exists.~~

4 (b) — ~~An action pursuant to the provisions of this chapter shall be commenced by the filing of a
verified complaint or a complaint verified by an affidavit, which may be accompanied by
5 a motion for a temporary abatement order, through and in the name of the city attorney.
Any complaint filed pursuant to Subsection 10-2.5-6(c) without a settlement meeting or
6 case evaluation shall include an affidavit or declaration attesting under penalty of perjury
to the facts establishing the immediate threat to public safety.~~

7 (1) — ~~The parties defendant to an action commenced under the provisions of this
chapter and the persons liable for the remedies provided by this chapter may
8 include the parcel of real property itself, any person owning or claiming any
ownership or leasehold interest in the parcel, all tenants and occupants of the
9 parcel, all managers and agents for any person claiming an ownership or
leasehold interest in the parcel, any person committing, conducting, promoting,
10 facilitating or aiding in the commission of a public nuisance, and any other person
whose involvement may be necessary to abate the nuisance, prevent it from
11 recurring, or to carry into effect the court's orders. None of these parties shall be
deemed necessary or indispensable parties. Any person holding any legal or
12 equitable interest in the parcel who has not been named as a party defendant may
intervene as a party defendant. No other person may intervene.~~

13 (2) — ~~The parties defendant shall be served as provided in the Colorado Rules of Civil
Procedure for other civil actions except as otherwise provided in this chapter.~~

14 (3) — ~~The summons, complaint and, if applicable, temporary abatement order shall be
15 served upon the real property itself by posting copies of the same in some
16 prominent place on the parcel.~~

17 **10-2.5-8. Effect of Abatement Efforts; Defense to Action.**

18 (a) — ~~If a person named as a party defendant is the owner of a parcel of real property and is
leasing the parcel to one or more tenants, or the person named has been hired by the
19 owner of the parcel to manage and lease the parcel, and the separate violations which
constitute the alleged public nuisance were committed by one or more of the tenants or
20 occupants of the parcel, it shall be a defense to an action pursuant to the provisions of this
chapter that said person has:~~

21 (1) — ~~Evicted, or attempted to evict by commencing and pursuing with due diligence
appropriate court proceedings, all of the tenants and occupants of the parcel that
22 committed each of the separate violations that constitute the alleged public
nuisance; and~~

23 (2) — ~~Has, considering the nature and extent of the separate violations, undertaken and
24 pursued with due diligence, reasonable means to avoid a recurrence of similar
violations on the parcel by the present and future tenants or occupants of the
25~~

1 parcel.

2 (b) ~~The defenses set forth in subsection (a) above shall not be available to any person who~~
3 ~~fails to attend a settlement meeting set up by the city manager prior to the filing of a~~
4 ~~nuisance abatement action.~~

5 (c) ~~If, in the judgment of the city manager, a person who has received a notice of violation~~
6 ~~has established sufficient grounds to assert a defense to an action under subsection (a)~~
7 ~~above, the separate violation which was the subject of the notice of violation shall no~~
8 ~~longer be considered a separate violation within the meaning of this chapter. Nothing~~
9 ~~herein shall be construed to prohibit the introduction of evidence of said separate~~
10 ~~violation at a subsequent court proceeding, if a public nuisance action is commenced on~~
11 ~~the basis of additional separate violations, for the purpose of determining whether the~~
12 ~~defendants named in such action have undertaken and pursued with due diligence~~
13 ~~reasonable means to avoid a recurrence of similar violations on the parcel of real property~~
14 ~~by the present and future tenants or occupants of the parcel.~~

15 (d) ~~Except as provided in subsection (a) above, the fact that a defendant took steps to abate~~
16 ~~the public nuisance after receiving the notice of its existence does not constitute a defense~~
17 ~~to an action brought pursuant to the provisions of this chapter.~~

18 **10-2.5-9. Court Directed Settlement Procedure.**

19 (a) ~~After a nuisance abatement action is filed pursuant to the provisions of this chapter, any~~
20 ~~party may file with the court clerk and serve a request for a court settlement conference,~~
21 ~~together with a notice for setting of such request. The court shall grant such request if, in~~
22 ~~its judgment, a settlement conference is appropriate under the particular circumstances.~~
23 ~~The court shall not grant any such request over the objection of the city attorney if the~~
24 ~~action is filed pursuant to Subsection 10-2.5-6(c) due to the city manager's determination~~
25 ~~of an immediate threat to public safety.~~

(b) ~~At any time prior to trial, the court may, without a request of the parties, order that a~~
~~settlement conference be held.~~

(c) ~~Any settlement conference held pursuant to the provisions of subsections (a) or (b) above~~
~~shall be conducted as follows:~~

(1) ~~The court settlement conference shall, if the request is granted, be conducted by~~
~~any available judge other than the judge assigned to handle a trial in the matter, or~~
~~by such other settlement officer, referee or mediator as may be selected by the~~
~~court for such purpose.~~

(2) ~~All discussions at the settlement conference shall remain confidential and shall~~
~~not be disclosed to the judge who presides at trial.~~

(3) ~~Statements at the settlement conference shall not be admissible evidence for any~~
~~purpose at the trial of the matter or in any other proceeding.~~

(d) ~~Settlement conferences, when held, shall be provided without special costs to the parties~~
~~except in the following circumstances:~~

(1) ~~With court approval, the parties may agree to retain the services of a particular~~

1 mediator or settlement officer to assist with settlement discussions. In this event,
2 the parties must agree to pay for the services of such outside settlement facilitator
and must agree about the terms of such payment.

3 (2) — In the event that any party failed to participate in a pre-filing settlement meeting
4 pursuant to the provisions of paragraph 10-2.5-6(a)(2), B.R.C. 1981, the court
may order such party to pay up to one-half of the reasonable costs or value of
5 court-ordered settlement procedures.

6 **10-2.5-10. Abatement Orders.**

7 (a) — Issuance and Effect of Temporary and Permanent Abatement Orders: The issuance of
8 temporary or permanent abatement orders under this chapter shall be governed by the
9 provisions of Rule 65 of the Colorado Rules of Civil Procedure pertaining to temporary
10 restraining orders, preliminary injunctions and permanent injunctions, except to the
extent of any inconsistency with the provisions of this chapter, in which event the
11 provisions of this chapter shall prevail. Temporary abatement orders provided for in this
chapter shall go into effect immediately when served upon the property or party against
whom they are directed. Permanent abatement orders shall go into effect as determined
12 by the court. No bond or other security shall be required of the city.

13 (b) — Form and Scope of Abatement Orders: Every abatement order under this chapter shall set
14 forth the reasons for its issuance; shall be reasonably specific in its terms; shall describe
in reasonable detail the acts and conditions authorized, required or prohibited; and shall
be binding upon the parcel, the parties to the action, their attorneys, agents and
15 employees and any other person named as a party-defendant in the public nuisance action
and served with a copy of the order.

16 (c) — Substance of Abatement Orders: Temporary or permanent abatement orders entered
pursuant to the provisions of this chapter shall be narrowly tailored to address the
particular kinds of separate violations that form the basis of the alleged public nuisance.
Such orders may include:

17 (1) — Requiring any parties-defendant to take steps to abate the public nuisance;

18 (2) — Authorizing the city manager to take reasonable steps to abate the public nuisance
activity and prevent it from recurring, considering the nature and extent of the
19 separate violations;

20 (3) — Requiring certain named individuals to stay away from the parcel at all times or
for some specific period of time;

21 (4) — Issuing any order that is reasonably necessary to access, maintain or safeguard the
parcel; and

22 (5) — Issuing any order that is reasonably necessary for the purposes of abating the
23 public nuisance or preventing the public nuisance from occurring or recurring;
provided, however, that no such order shall require the seizure of, the forfeiture of
24 title to, or the temporary or permanent closure of, a parcel, or the appointment of a
special receiver to protect, possess, maintain or operate a parcel.

25 (d) — Temporary Abatement Orders:

1 (1) — ~~The purpose of a temporary abatement order shall be to abate temporarily an~~
2 ~~alleged public nuisance pending the final determination of a public nuisance. A~~
3 ~~temporary abatement order may be issued by the court pursuant to the provisions~~
4 ~~of this section even if the effect of such order is to change, rather than preserve,~~
5 ~~the status quo.~~

6 (2) — ~~At any hearing on a motion for a temporary abatement order, the city shall have~~
7 ~~the burden of proving that there are reasonable grounds to believe that a public~~
8 ~~nuisance occurred in or on the parcel and, in the case of a temporary order granted~~
9 ~~without notice to the party defendants, that such order is reasonably necessary to~~
10 ~~avoid some immediate, irreparable loss, damage or injury. In determining whether~~
11 ~~there are such reasonable grounds, the court may consider whether an affirmative~~
12 ~~defense may exist under any of the provisions of this chapter.~~

13 (3) — ~~At any hearing on a motion for a temporary abatement order or a motion to vacate~~
14 ~~or modify a temporary abatement order, the court shall temper the rules of~~
15 ~~evidence and admit hearsay evidence unless the court finds that such evidence is~~
16 ~~not reasonably reliable and trustworthy. The court may also consider the facts~~
17 ~~alleged in the verified complaint or in any affidavit submitted in support of the~~
18 ~~complaint or motion for temporary abatement order.~~

19 (e) — ~~Permanent Abatement Orders:~~

20 (1) — ~~At the trial on the merits of a civil action commenced under this chapter, the city~~
21 ~~shall have the burden of proving by a preponderance of the evidence that a public~~
22 ~~nuisance occurred on or in the parcel identified in the complaint. At such trial, the~~
23 ~~city must also prove, by a preponderance of the evidence, any separate violations~~
24 ~~asserted as grounds for the public nuisance action that have not been previously~~
25 ~~adjudicated. The Colorado Rules of Evidence shall govern the introduction of~~
~~evidence at all such trials.~~

(2) — ~~Where the existence of a public nuisance is established in a civil action pursuant~~
~~to the provisions of this chapter after a trial on the merits, the court shall enter a~~
~~permanent abatement order requiring the parties defendant to abate the public~~
~~nuisance and take specific steps to prevent the same and other public nuisances~~
~~from occurring or recurring on the parcel or in using the parcel.~~

(f) — ~~Violation of Abatement Order:~~

(1) — ~~No person shall fail to comply with any abatement order issued pursuant to the~~
~~provisions of this chapter. Each day that a person is in violation of any such~~
~~abatement order shall constitute a separate violation of these provisions.~~

(2) — ~~Whether or not a prosecution is brought pursuant to paragraph (1) of this~~
~~subsection, the municipal court shall retain full authority to enforce its abatement~~
~~orders by the use of its contempt powers. In a contempt proceeding brought as a~~
~~result of violation of an abatement order issued pursuant to this chapter, the~~
~~municipal court may, in its discretion, treat each day during which a party is in~~
~~violation of an abatement order as a separate act of contempt.~~

1 **10-2.5-11. Attorney's Fees.**

2 (a) ~~Other than as specifically provided by this section, attorney's fees shall not be awarded to~~
3 ~~any party in a nuisance abatement proceeding brought pursuant to the provisions of this~~
4 ~~chapter.~~

4 (b) ~~Attorney's fees may be awarded at the discretion of the court under the following~~
5 ~~circumstances:~~

5 (1) ~~Where there has been a judicial finding of the existence of a nuisance, as defined~~
6 ~~by the provisions of this chapter, whether such finding is made at trial or as part~~
7 ~~of a settlement in advance of a trial; and~~

7 (2) ~~When the party found to be responsible for the nuisance failed to attend a~~
8 ~~settlement meeting set up by the city manager pursuant to paragraph 10-2.5-~~
9 ~~6(a)(2), B.R.C. 1981.~~

9 **10-2.5-12. Motion to Vacate or Modify Temporary Abatement Orders.**

9 (a) ~~Timing of Motion to Vacate Temporary Order: At any time a temporary abatement order~~
10 ~~is in effect, any party defendant or any person holding any legal or equitable interest in~~
11 ~~any parcel governed by such an order may file a motion to vacate or modify said order.~~
12 ~~Any motion filed under this subsection (a) shall state specifically the factual and legal~~
13 ~~grounds upon which it is based, and only those grounds may be considered at the hearing.~~

12 (b) ~~Standard of Proof for Vacation of Temporary Order: The court shall vacate the order if it~~
13 ~~finds by a preponderance of the evidence that there are no reasonable grounds to believe~~
14 ~~that a public nuisance was committed in or on the parcel. The court may modify the order~~
15 ~~if it finds by a preponderance of the evidence that such modification will not be~~
16 ~~detrimental to the public interest and is appropriate, considering the nature and extent of~~
17 ~~the separate violations.~~

16 (c) ~~Continuance of Hearing: The court shall not grant a continuance of any hearing set under~~
17 ~~this section unless all the parties so stipulate.~~

17 (d) ~~Consolidation of Hearing With Other Proceedings: If all parties consent, the court may~~
18 ~~order the trial on the merits to be advanced and tried with the hearing on these motions.~~

18 **10-2.5-13. Civil Judgment.**

19 ~~In any case in which a public nuisance is established, in addition to a permanent~~
20 ~~abatement order, the court may impose a separate civil judgment on every party defendant who~~
21 ~~committed, conducted, promoted, facilitated, permitted, failed to prevent or otherwise let happen~~
22 ~~any public nuisance in or on the parcel that is the subject of the public nuisance action. This civil~~
23 ~~judgment shall be for the purpose of compensating the city for the costs it incurs in pursuing the~~
24 ~~remedies pursuant to the provisions of this chapter, and shall not be punitive in nature. For the~~
25 ~~purpose of this section, costs include expenses of the type detailed in § 13-16-122, C.R.S.~~

23 **10-2.5-14. Supplementary Remedies for Public Nuisances.**

24 ~~In any action filed under the provisions of this chapter, in the event that any one of the~~
25 ~~parties fails, neglects or refuses to comply with an order of the court, the court may, upon the~~
~~motion of the city, in addition to or in the alternative to the remedy of contempt and the~~

1 possibility of criminal prosecution, permit the city to enter upon the parcel of real property and
2 abate the nuisance, take steps to prevent public nuisances from occurring, or perform other acts
3 required of the defendants in the court's orders.

3 **~~10-2.5-15. Stipulated Alternative Remedies.~~**

4 (a) ~~—The city and any party defendant to an action pursuant to the provisions of this chapter
5 may voluntarily stipulate to orders and remedies, temporary or permanent, that are
6 different from those provided in this chapter.~~

6 (b) ~~—The court shall make such stipulations for alternative remedies an order of the court and
7 they shall be enforceable as an order of the court.~~

7 **~~10-2.5-16. Remedies Under Other Laws Unaffected.~~**

8 ~~Nothing in this chapter shall be construed as limiting or forbidding the city or any other
9 person from pursuing any other remedies available at law or in equity, or requiring that evidence
10 or property seized, confiscated, closed, forfeited or destroyed under other provisions of law be
11 subjected to the special remedies and procedures provided in this chapter.~~

10 **~~10-2.5-17. Limitation of Actions.~~**

11 ~~Actions pursuant to the provisions of this chapter shall be filed no later than one year
12 after the final public nuisance incident that serves as the basis for the bringing of an action
13 pursuant to this chapter. This limitation shall not be construed to limit the introduction of
14 evidence of any other separate violations that occurred more than one year before the filing of
15 the complaint for the purpose of establishing the existence of a public nuisance or when relevant
16 for any other purpose.~~

14 **~~10-2.5-18. Effect of Property Conveyance.~~**

15 ~~When title to a parcel is conveyed from one person to another, any separate violation
16 existing at the time of the conveyance which could be used under this chapter to prove that a
17 public nuisance exists with respect to such parcel, shall not be so used unless a reason for the
18 conveyance was to avoid the parcel being declared a public nuisance pursuant to the provisions
19 of this chapter. It shall be a rebuttable presumption that a reason for the conveyance of the parcel
20 was to avoid the parcel from being declared a public nuisance pursuant to the provisions of this
21 chapter if: a) the parcel was conveyed for less than fair market value; b) the parcel was conveyed
22 to an entity or entities controlled directly or indirectly by the person conveying the parcel; or c)
23 the parcel was conveyed to a relative of the person conveying the parcel.~~

21 Section 2. Chapter 10-3, "Rental Licenses," B.R.C. 1981, is amended to read as follows:

22 . . .

22 **10-3-3. - Terms of Licenses.**

23 (a) License terms shall be as follows:

24 Licenses, other than reduced term licenses issued under Section 10-3-4, "Reduced Term
25 License," B.R.C. 1981, or temporary licenses issued under Section 10-3-9, "Temporary
License Appeals," B.R.C. 1981, shall expire four years from issuance or when ownership

1 of the licensed property is transferred.

- 2 (b) In addition to any other applicable requirements, new licenses and renewals shall require
3 that the licensee submit to the city manager a complete application packet for the license,
4 on forms provided by the manager. The application shall satisfy the following
5 requirements:
- 6 (1) A current rental inspection report (for a new license except as set forth in Section 10-
7 3-5, "License Procedure for Newly Constructed Rental Property," B.R.C. 1981,) certifying compliance with those portions of Chapter 10-2, "Property Maintenance
8 Code," and Section 9-9-16, "Lighting, Outdoor," B.R.C. 1981, for which the report
9 form requires inspection and certification; and
 - 10 (2) The operator shall certify on the application forms provided by the manager that the
11 operator has a current valid contract with a commercial trash hauler for removal of
12 accumulated trash from the licensed property in accordance with Subsection 6-3-3(b),
13 B.R.C. 1981; and
 - 14 (3) The property has no outstanding violations pursuant to Chapter 10-2.5, "Abatement
15 of Public Nuisance and Chronic Nuisance Property," B.R.C. 1981.
- 16 (c) The city manager shall issue separate licenses for individual buildings. Such licenses shall
17 cover all dwelling units and rooming units within such buildings. In a building containing
18 attached but individually owned dwelling units, or any other dwelling units which may be
19 separately conveyed, the city manager shall issue separate licenses for each dwelling unit.
20 A structure, or group of structures, shall be considered to be a single building if it has been
21 assigned a single street address by the City. If a complex of buildings on one property is
22 under common ownership, and this owner is willing to have a common expiration date for
23 the licenses for all dwelling and rooming units, the city manager may consider the whole
24 complex to be the equivalent of a single building for the purposes of licensing and the fee
25 schedule in Section 4-20-18, "Rental License Fee," B.R.C. 1981.
- (d) Whenever an existing license is renewed, the renewal license shall be effective from the
date of expiration of the last license if the applicant submits a complete renewal application
by or within ninety days from the expiration date.
- (e) Issuance of any license (new or renewed) requires meeting the energy efficiency
requirements of Chapter 10-2, "Property Maintenance Code, Appendix C - Energy
Efficiency Requirements," B.R.C. 1981.

21 **10-3-4. - Reduced Term License.**

- 22 (a) The city manager shall issue a reduced term license whenever the city manager determines
23 that:
- 24 (1) Violations of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, revealed
25 during an inspection, individually or in combination, demonstrate a failure to
maintain the rental property in a safe, sanitary and clean condition so that the
dwelling endangers the health and safety of the occupants;

- 1 (2) There is or has been a violation of a limitation on numbers of occupants or numbers
2 of dwelling units found in Title 9, "Land Use Code," B.R.C. 1981, which
3 demonstrates a failure to maintain the rental property in compliance with that title; or
4 (3) Violations of Section 9-9-16, "Lighting Outdoor," B.R.C. 1981, of a building or
5 complex of buildings on the same property with multiple dwelling units that are all
6 held under common ownership, revealed during an inspection or otherwise,
7 demonstrate a failure to maintain the rental property in compliance with Title 9,
8 "Land Use Code," B.R.C. 1981; or
9 (4) There is an outstanding violation of Chapter 10-2.5, "Abatement of Public Nuisance
10 and Chronic Nuisance Property," B.R.C. 1981, within the past two years.
11 (b) The terms of a reduced term license shall be as follows:
12 (1) For violations of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, the
13 license term shall be reduced to twenty-four months.
14 (2) For violations of Title 9, "Land Use Code," and Chapter 10-2.5, "Abatement of
15 Public Nuisance and Chronic Nuisance Property," B.R.C. 1981, the license term shall
16 be reduced to twelve months. A reduced term license issued to allow the operator to
17 bring the rental property into compliance with Section 9-9-16, "Lighting Outdoor,"
18 B.R.C. 1981, may only be issued one time.
19 (c) The city manager may issue a reduced term short-term rental license if the operator has
20 received a penalty, suspension or other order pursuant to Section 10-3-16(a),
21 "Administrative Remedy," B.R.C. 1981.
22 (d) If an operator disagrees with the decision of the city manager to issue a reduced term
23 license under subsection (a) of this section, such person may appeal the city manager's
24 decision within thirty days after the issuance of the reduced term license, as follows:
25 (1) For reduced term licenses issued as a result of violations of Chapter 10-2, "Property
Maintenance Code," B.R.C. 1981, the appeal shall be made as provided in Section
10-2-2, Section 111, "Means of Appeal," B.R.C. 1981.
(2) For reduced term licenses issued as a result of violations of Title 9, "Land Use Code,"
or Chapter 10-2.5, "Abatement of Public Nuisance and Chronic Nuisance Property,"
B.R.C. 1981, the appeal shall be made to the board of zoning adjustment, although
the fee amount shall be as specified for an appeal to the board of building appeals.

...

10-3-14. - Local Agent Required.

Whenever any rental property is required to be licensed under this chapter, and neither the owner nor the operator is a natural person domiciled within Boulder County, Colorado, the owner shall appoint a natural person who is capable of responding to the property within sixty minutes, to serve as the local agent of the owner and the operator for service of such notices as are specified in Section 10-2-2, "Property Maintenance Code," Chapter 10-2.5, "Abatement of Public Nuisance and Chronic Nuisance Property," Section 108, "Unsafe Structures and Equipment," and Section 109, "Emergency Measures," B.R.C 1981, and notices given to the

1 local agent shall be sufficient to satisfy any requirement of notice to the owner or the operator.
2 The owner shall notify the city manager in writing of the appointment within five days of being
3 required to make such an appointment, and shall thereafter notify the city manager of any change
4 of local agent within fifteen days of such change.

5 . . .

6 **10-3-16. - Administrative Remedy.**

7 (a) If the city manager finds that a violation of any provision of this chapter, ~~or~~ Chapter 10-2,
8 “Property Maintenance Code,” or Chapter 10-2.5, “Abatement of Public Nuisance and
9 Chronic Nuisance Property,” B.R.C. 1981, exists, the manager, after notice to the operator
10 and an opportunity for hearing under the procedures prescribed by Chapter 1-3, “Quasi-
11 Judicial Hearings,” B.R.C. 1981, may take any one or more of the following actions to
12 remedy the violation:

13 (1) Impose a civil penalty according to the following schedule:

14 (A) ~~For any violation in the following areas or of affordability standards: The area~~
15 ~~south of Arapahoe Avenue, north of Baseline Road, east of 6th Street and west~~
16 ~~of Broadway, the area south of Baseline Road, north of Table Mesa Drive, east~~
17 ~~of Broadway and west of U.S. Route 36 and the area south of Canyon~~
18 ~~Boulevard, north of Arapahoe Avenue, west of Folsom Street and east of 15th~~
19 ~~Street or for any violation of affordability standards for an affordable accessory~~
20 ~~unit approved under Subsection 9-6-3(n), B.R.C. 1981:~~

21 (i) ~~For the first violation of the provision, \$500;~~

22 (ii) ~~For the second violation of the same provision, \$750; and~~

23 (iii) ~~For the third violation of the same provision, \$1,000;~~

24 (B) ~~For a violation in any other area:~~

25 (A*i*) For the first violation of the provision, \$150;

(B*ii*) For the second violation of the same provision, \$300; and

(C*iii*) For the third violation of the same provision, \$1,000.

(2) Revoke the rental license;

(3) If the city manager finds that a short-term rental license was issued to a licensee who
is determined not to comply with subsections (1), (2) or (3) of Section 10-3-19(c),
“Short-Term Rentals,” B.R.C. 1981, the city manager shall revoke the short-term
rental license; and

(4) Issue any order reasonably calculated to ensure compliance with this chapter, and
Chapter 10-2, “Property Maintenance Code,” B.R.C. 1981.

(b) If the city manager finds that an affordable accessory unit was advertised, offered for rent
or rented for an amount in excess of the affordability standard, in addition to the actions the
manager may take under subsection (a), of this section, the manager shall impose a penalty
equal to the amount charged in excess of the affordability standard during the term of the
license, plus interest at the rate of twelve percent per annum, and shall pay such funds

1 collected to the tenant who was charged in excess of the affordability standard.

- 2 (c) If notice is given to the city manager by the operator at least forty-eight hours before the
3 time and date set forth in the notice of hearing on any violation that the violation has been
4 corrected, the manager will reinspect the building. If the manager finds that the violation
5 has been corrected, the manager may cancel the hearing.
- 6 (d) The city manager's authority under this section is in addition to any other authority the
7 manager has to enforce this chapter, and election of one remedy by the manager shall not
8 preclude resorting to any other remedy as well.
- 9 (e) The city manager may, in addition to taking other collection remedies, certify due and
10 unpaid charges to the Boulder County Treasurer for collection as provided by Section 2-2-
11 12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for
12 Collection," B.R.C. 1981.
- 13 (f) To cover the costs of investigative inspections, the city manager will assess operators a
14 \$250 fee per inspection, where the city manager performs an investigative inspection to
15 ascertain compliance with or violations of this chapter.
- 16 (g) The city manager shall not accept a new application from the same licensee for the same
17 dwelling unit or units after revocation of a license:
- 18 (1) For at least six months following the revocation; and
 - 19 (2) Unless the applicant demonstrates compliance with all licensing requirements.

20 Section 3. This Ordinance is necessary to protect the public health, safety, and welfare of
21 the residents of the city, and covers matters of local concern.

22 Section 4. The City Council deems it appropriate that this Ordinance be published by
23 title only and orders that copies of this ordinance be made available in the office of the city clerk
24 for public inspection and acquisition.
25

1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY
2 TITLE ONLY this 25th day of July 2024.

3
4 _____
5 Aaron Brockett,
6 Mayor

7 Attest:

8 _____
9 City Clerk

10 READ ON SECOND READING, PASSED AND ADOPTED this 8th day of August 2024.

11
12 _____
13 Aaron Brockett,
14 Mayor

15 Attest:

16 _____
17 City Clerk