

Introduction to Annotated Ordinance

In addition to the proposed changes outlined in the below annotated version of the current nuisance abatement ordinance, proposed additional sections and concepts were added throughout the ordinance. The main additions include, but are not limited to:

- Adding a new term, chronic nuisance, which applies only to residential properties. Excludes traffic, crime victims, false reports, and false alarms. Chronic nuisance properties are divided into tiers, based upon the number of dwelling units and the resulting number of nuisance violations that qualify the property as chronic. These numbers are data driven and capture the top violating properties in the city. *10-2.5-1, B.R.C. [References are the proposed ordinance code sections.]*
- Adding a new defining term, abatement agreement, to provide examples of what should be included in the agreement for chronic nuisance properties. *10-2.5-1, B.R.C.*
- Requiring appropriate warnings for properties near the chronic nuisance threshold and requiring property owners work with the city to create a written plan to abate the nuisances. *10-2.5-6 and 10-2.5-7, B.R.C.*
- Property owners and/or their representatives have been added to the list of parties to respond to chronic nuisance and public nuisance violations throughout the ordinance.
- Property owners can present evidence to mitigate consequences under this chapter. The proposed language states that “action or inaction taken by the owner [can be used] to mitigate or correct the nuisance activities at the property.” Therefore, the landlord, by not addressing nuisance activities on the property, meets the negligence standard because a reasonably prudent person in similar circumstances would take action to correct the nuisance activities on the property. Negligence, or lack thereof, would be accounted for in the penalty phase of any chronic nuisance proceeding rather than the proof phase. *10-2.5-13 (b)(2), B.R.C.*
- Additional administrative remedies, including creating a requirement to pay for abatement costs if the city must abate the nuisance(s) and an escalating fine schedule for nuisance infractions. *10-2.5-11, B.R.C.*
- A more clearly defined set of civil and criminal sanctions, to be applied by the municipal court, for failing to address nuisances. *10-2.5-10 and 10-2.5-13, B.R.C.*
- Ability for the court to stipulate alternative remedies, including restorative justice. *10-2.5-15, B.R.C.*
- Authorization for the city manager to adopt rules to further implement the ordinance. *10-2.5-23, B.R.C.*
- Providing reduced term rental licenses for violations of 10-2.5. *10-3-4, B.R.C.*

- Under extreme circumstances, permitting the removal of a rental license. *10-3-16, B.R.C.*
- Adding a reconsideration opportunity for occupancy due to administrative confusion of the current ordinance. *10-3-20, B.R.C.*

“OLD” [CURRENT] Boulder Code

[Side annotations in the Comments format relate to how the current code has been updated.]

Chapter 2.5 Abatement of Public Nuisances

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 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 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, are 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 seriously threaten the peace and safety of neighboring residents and undermine the quality of life of the residents of the city.
- (e) Public nuisance laws exist under the state statutes, 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.
- (g) Section 16-13-302(1), C.R.S., specifically provides that the state public nuisance laws shall not be construed to limit or preempt the powers of any court or political subdivision to abate or control nuisances.
- (h) It is necessary and desirable in the public interest to enact a local public nuisance law in order to: eliminate local public nuisances by removing parcels of real property in the city from a condition that consistently and repeatedly violates municipal law; make property owners vigilant in preventing public nuisances on or in their property; make property owners responsible for the use of their property by tenants, guests and occupants; provide locally enforceable remedies for violations of local ordinances; and otherwise deter public nuisances.
- (i) The purpose of this chapter is to enact such a local public nuisance law.

Commented [A1]: The legislative statements are amended in the new ordinance to include chronic nuisance, in addition to public nuisance.

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

10-2.5-2. Definitions.

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

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

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

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

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

Public nuisance means the condition or use of any parcel on or in which two or more separate violations have occurred within the preceding twelve-month period between August 1 and continuing through July 31 of each year or three or more separate violations have occurred within any period of twenty-four consecutive months, if, during each such violation, the conduct of the person committing the violation was such as to annoy residents in the vicinity of the parcel or of passers-by on the public streets, sidewalks and rights-of-way in the vicinity of the parcel. However, this definition of "public nuisance" is subject to the defenses set forth in paragraph 10-

Commented [A2]: A new definition of chronic nuisance has been added here, to include:

Chronic nuisance property means:

A parcel with a single dwelling unit where five (5) or more public nuisances have occurred within one calendar year; or
A parcel with two dwelling units where seven (7) or more public nuisances have occurred within one calendar year; or
A parcel with three to nine dwelling units where seven (7) or more public nuisances have occurred within one calendar year; or

A parcel with ten or more dwelling units where twenty-three (23) or more public nuisances have occurred within one calendar year.

Note: In a previous draft, there were three categories of nuisance properties. This has been expanded to four to meet public feedback.

Commented [A3]: The definition of parcel is the same except that it is clarified to not apply to homeless shelters.

Commented [A4]: Public nuisance is proposed to be modified to be one separate violation. City staff provide multiple warnings before issuing a public nuisance violation.

2.5-8(a)(2), B.R.C. 1981. Also, a public nuisance is not established when the only person annoyed is a law enforcement officer engaged in carrying out official duties.

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.

Separate violation means any act or omission that constitutes a violation of the Boulder Revised Code, or state criminal law with the exception of traffic offenses and offenses in which the resident of the parcel is a crime victim, provided that: an ongoing and uninterrupted violation shall be deemed to have been committed only on the last day during which all the necessary elements of the violation existed; multiple violations committed within any twenty-four-hour period of time on or in the same parcel shall be considered a single separate violation, irrespective of whether the violations are otherwise related to each other by some underlying 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.

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

10-2.5-3. - Nature of Remedies.

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

10-2.5-4. Nuisance Prohibited.

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

10-2.5-5. Procedures in General.

- (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.
- (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.
- (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

Commented [A5]: Four exceptions are proposed for public nuisance:

1. traffic offenses;
2. offenses in which the resident 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
4. a false alarm as defined in Chapter 4-16, “Police Alarm Systems,” B.R.C. 1981, unless the false alarm was caused, permitted, or allowed by an occupant or owner of the parcel in violation of Chapter 16.

Additionally, chronic nuisance only applies to residential properties.

Commented [A6]: The definition of separate violation and public nuisance are proposed to be combined and streamlined in the revised ordinance.

Commented [A7]: This section has been moved to 10-2.5-8 and the language clarified.

Commented [A8]: This section has been renamed to “Owner Responsibility” under 10-2.5-3. Additional language has been added to include chronic nuisance, among other things.

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.

- (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.
- (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.
- (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.
- (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.

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

- (a) No action shall be brought pursuant to the provisions of this chapter until the following procedures have been utilized:
 - (1) Following the first violation that serves as the basis for a nuisance abatement action, written notice of violation shall be given by the city manager to the owner of the parcel at which the nuisance conditions occurred.
 - (A) The notice shall be personally served upon the owner or served by certified mail to the parcel, addressed to the owner by name, mailed 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. Personal service or service by mail shall be given no later than thirty days following the date of the violation.
 - (B) The notice shall specify the nature of the nuisance, the date or dates of the nuisance and the provision of the Boulder Revised Code that was violated. When

Commented [A9]: The revised ordinance includes strict liability, which now includes chronic nuisance, under 10-2.5-4, Procedures in General. Other than adding chronic nuisance, this language is the same and is the most common mental state for nuisance violations.

Commented [A10]: New subsections on burden of proof and quasi judicial hearing rules have been added to clarify that the quasi judicial hearing rules apply in cases of administrative remedies and appeals; and to state the burden of proof clearly for criminal and civil cases.

Commented [A11]: Section has been amended and clarified into:

10-2.5-5 Notices for public nuisance
10-2.5-6 Notices for chronic nuisance
10-2.5-7 Abatement agreement for chronic nuisance property

a nuisance occurred at a multi-unit building, the city manager shall identify the unit or units involved in the problem.

- (C) The city manager shall also send copies of the notice to tenants or others if, in the judgment of the city manager, notice to such additional persons will assist in abatement of nuisance conditions.
 - (D) The notice may be accompanied by educational materials which, in the judgment of the city manager, will be of assistance to responsible parties in abating and avoiding nuisance conditions.
 - (E) No notice shall be given pursuant to this provision, nor shall any event be utilized as a “first incident” for the purpose of bringing a nuisance abatement action, unless the city manager determines that such incident 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.
 - (C) Landlords, tenants, residents and others whose corrective action is deemed necessary by the city manager in order to resolve nuisance conditions will be asked to attend the settlement meeting. Owners of rental properties may participate in such meetings through representatives legally authorized to enter into voluntary compliance agreements on behalf of those owners.
 - (D) Neighbors, victims and others may also be invited to attend such meetings. However, attendance of such persons will not be required. When victims and impacted neighbors do not choose to attend such meetings, the city manager will attempt to determine the impact of nuisance conditions upon such persons and present that information at the meeting.
 - (E) The scheduling, location and format of settlement meetings will be determined by the city manager in a manner that the city manager believes will be best suited resolving the problem. The city manager may utilize mediators, facilitators and other experts (including community volunteers) to assist in the resolution of the problem.

Commented [A12]: The timeliness and involvement of multiple roles uncharged for nuisance violations have made this process too cumbersome. It has taken months to years to complete in the past with unsatisfactory results reported by participants. As a result, the settlement meeting process has been removed in an effort to define and streamline both public and chronic nuisance.

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

(G) If no voluntary compliance agreement is achieved or, if such agreement is achieved and thereafter the city manager determines that a party has failed to comply with the terms of such agreement to the city manager's sole satisfaction, or if an owner fails to attend a scheduled settlement meeting to which they have been invited, the matter may be referred to the city attorney for evaluation and potential filing of a nuisance abatement action. 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 structure that might provide an avenue for relief of the problem and the probability that such governing body or management structure will be able to resolve the problem;
- (7) The existence of any equitable, factual, legal, ethical or other consideration of the type that would normally be considered by an attorney when deciding whether or not to file a civil action;
- (8) The availability of resources required for the prosecution of the potential case;
- (9) The availability of any other enforcement tools that might be better suited to resolution of the particular problem; and
- (10) The probability of prevailing at a trial on the matter.

(c) Notwithstanding the settlement meeting and case evaluation procedures described in subsections (a)(2) and (b) above, the city manager may request that the city attorney file a nuisance abatement action immediately if, in the city manager's judgment, facts exist to support a sworn statement that a public nuisance posing an immediate threat to the public safety is in existence as a result of the condition or use of parcel in question. The city attorney shall file such an action only if he or she concurs with the city manager's request. The city manager and city attorney may consult with the city council on such actions. For

Commented [A13]: This section has been proposed to be removed, however, similar factors are included in two subsections in the proposed ordinance, which can be found here:

10-2.5-11. - Administrative Remedies.
10-2.5-13. - Remedies for Civil Abatement Action.

Commented [A14]: A similar version of this may be found in the new ordinance, 10-2-6(g).

the purposes of this subsection (c), *threat to the public safety* shall include only those violations that involve actual or threatened physical violence directed at persons or animals, substantial property damage or other specific acts that harm or threaten to harm human health or human safety.

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

- (a) Notification is required before filing civil actions pursuant to the provisions of this chapter as follows:
- (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 of the parcel. The mailing of the notice shall be deemed sufficient if mailed by certified mail to the owner at the address shown of record relating to the parcel for such owner in the records of the Boulder County Assessor. The posted and mailed notices shall state that the parcel has been identified as the location of an alleged public nuisance and that a civil 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 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:
 - (A) The public nuisance poses an immediate threat to public safety;
 - (B) Notice would jeopardize a pending investigation of criminal or public nuisance activity, confidential informants or other police activity; or
 - (C) Any other emergency circumstance exists.
- (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 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 case evaluation shall include an affidavit or declaration attesting under penalty of perjury to the facts establishing the immediate threat to public safety.
- (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 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 parcel, all managers and agents for any person claiming an ownership or leasehold interest in the parcel, any person committing, conducting, promoting, 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 recurring, or to carry into effect the court's orders. None of these parties shall be deemed necessary or indispensable parties. Any person holding

Commented [A15]: This section is proposed to be expanded to include chronic nuisance and the language clarified in the new ordinance and is now found at 10-2.5-12.

any legal or 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.

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

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

- (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 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 occupants of the parcel, it shall be a defense to an action pursuant to the provisions of this chapter that said person has:
 - (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 committed each of the separate violations that constitute the alleged public nuisance; and
 - (2) Has, considering the nature and extent of the separate violations, undertaken and 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 parcel.
- (b) The defenses set forth in subsection (a) above shall not be available to any person who fails to attend a settlement meeting set up by the city manager prior to the filing of a nuisance abatement action.
- (c) 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) above, the separate violation which was the subject of the notice of violation shall no longer be considered a separate violation within the meaning of this chapter. Nothing herein shall be construed to prohibit the introduction of evidence of said separate violation at a subsequent court proceeding, if a public nuisance action is commenced on the basis of additional separate violations, 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.
- (d) Except as provided in subsection (a) above, the fact that a defendant took steps to abate the public nuisance after receiving the notice of its existence does not constitute a defense to an action brought pursuant to the provisions of this chapter.

10-2.5-9. Court Directed Settlement Procedure.

- (a) After a nuisance abatement action is filed pursuant to the provisions of this chapter, any party may file with the court clerk and serve a request for a court settlement conference, together with a notice for setting of such request. The court shall grant such request if, in its

Commented [A16]: This section has been amended and moved in the new ordinance to 10-2.5-17.

Commented [A17]: This has been changed to an abatement agreement. If a property owner, etc, works with the city on an abatement agreement and addresses the problem, it is a defense to action taken under this Chapter.

Commented [A18]: The timeliness and involvement of multiple roles uncharged for nuisance violations have made this process too cumbersome. It has taken months to years to complete in the past with unsatisfactory results reported by participants. As a result, the settlement meeting process has been removed in an effort to define and streamline both public and chronic nuisance. The court does have discretion to use stipulated alternative remedies, see proposed ordinance 10-2.5-15

judgment, a settlement conference is appropriate under the particular circumstances. The court shall not grant any such request over the objection of the city attorney if the action is filed pursuant to Subsection 10-2.5-6(c) due to the city manager's determination 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 mediator or settlement officer to assist with settlement discussions. In this event, the parties must agree to pay for the services of such outside settlement facilitator and must agree about the terms of such payment.
 - (2) In the event that any party failed to participate in a pre-filing settlement meeting 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 court-ordered settlement procedures.

10-2.5-10. Abatement Orders.

- (a) Issuance and Effect of Temporary and Permanent Abatement Orders: The issuance of temporary or permanent abatement orders under this chapter shall be governed by the provisions of Rule 65 of the Colorado Rules of Civil Procedure pertaining to temporary restraining orders, preliminary injunctions and permanent injunctions, except to the extent of any inconsistency with the provisions of this chapter, in which event the 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 by the court. No bond or other security shall be required of the city.
- (b) Form and Scope of Abatement Orders: Every abatement order under this chapter shall set 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 employees and

Commented [A19]: This subsection is in the new ordinance under 10-2.5-18. The main proposed changes, aside from language clarification, are adding chronic nuisance to this section.

any other person named as a party-defendant in the public nuisance action and served with a copy of the order.

- (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:
 - (1) Requiring any parties-defendant to take steps to abate the public nuisance;
 - (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 separate violations;
 - (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 the 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 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 abate temporarily an alleged public nuisance pending the final determination of a public nuisance. A temporary abatement order may be issued by the court pursuant to the provisions of this section even if the effect of such order is to change, rather than preserve, the status quo.
 - (2) At any hearing on a motion for a temporary abatement order, the city shall have the burden of proving that there are reasonable grounds to believe that a public nuisance occurred in or on the parcel and, in the case of a temporary order granted without notice to the party-defendants, that such order is reasonably necessary to avoid some immediate, irreparable loss, damage or injury. In determining whether there are such reasonable grounds, the court may consider whether an affirmative defense may exist under any of the provisions of this chapter.
 - (3) At any hearing on a motion for a temporary abatement order or a motion to vacate or modify a temporary abatement order, the court shall temper the rules of evidence and admit hearsay evidence unless the court finds that such evidence is not reasonably reliable and trustworthy. The court may also consider the facts alleged in the verified complaint or in any affidavit submitted in support of the complaint or motion for temporary abatement order.
- (e) Permanent Abatement Orders:
 - (1) At the trial on the merits of a civil action commenced under this chapter, the city shall have the burden of proving by a preponderance of the evidence that a public nuisance occurred on or in the parcel identified in the complaint. At such trial, the city must also

prove, by a preponderance of the evidence, any separate violations asserted as grounds for the public nuisance action that have not been previously 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.

10-2.5-11. Attorney's Fees.

- (a) Other than as specifically provided by this section, attorney's fees shall not be awarded to any party in a nuisance abatement proceeding brought pursuant to the provisions of this chapter.
- (b) Attorney's fees may be awarded at the discretion of the court under the following circumstances:
 - (1) Where there has been a judicial finding of the existence of a nuisance, as defined by the provisions of this chapter, whether such finding is made at trial or as part of a settlement in advance of a trial; and
 - (2) When the party found to be responsible for the nuisance failed to attend a settlement meeting set up by the city manager pursuant to paragraph 10-2.5-6(a)(2), B.R.C. 1981.

Commented [A20]: This section is in the new ordinance under 10-2.5-22 and is proposed to include chronic nuisance in addition to public nuisance.

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

- (a) Timing of Motion to Vacate Temporary Order: At any time a temporary abatement order is in effect, any party-defendant or any person holding any legal or equitable interest in any parcel governed by such an order may file a motion to vacate or modify said order. Any motion filed under this subsection (a) shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing.
- (b) Standard of Proof for Vacation of Temporary Order: The court shall vacate the order if it finds by a preponderance of the evidence that there are no reasonable grounds to believe that a public nuisance was committed in or on the parcel. The court may modify the order if it finds by a preponderance of the evidence that such modification will not be detrimental to

Commented [A21]: This section is in the new ordinance under 10-2.5-19 and is proposed to include chronic nuisance in addition to public nuisance.

the public interest and is appropriate, considering the nature and extent of the separate violations.

- (c) Continuation of Hearing: The court shall not grant a continuance of any hearing set under this section unless all the parties so stipulate.
- (d) Consolidation of Hearing With Other Proceedings: If all parties consent, the court may order the trial on the merits to be advanced and tried with the hearing on these motions.

10-2.5-13. Civil Judgment.

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

Commented [A22]: This section has been included into the new 10-2.5-13, Remedies for Civil Abatement Action, and is proposed to include considerations for the court in determining if an additional civil judgment should be imposed. This has also been expanded to include both chronic and public nuisances.

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

In any action filed under the provisions of this chapter, in the event that any one of the 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 possibility of criminal prosecution, permit the city to enter upon the parcel of real property and abate the nuisance, take steps to prevent public nuisances from occurring, or perform other acts required of the defendants in the court's orders.

Commented [A23]: This section remained the same except that it is proposed to include chronic nuisance in addition to public nuisance.

10-2.5-15. Stipulated Alternative Remedies.

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

Commented [A24]: This section remained the same.

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

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

Commented [A25]: This section remained the same.

10-2.5-17. Limitation of Actions.

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

Commented [A26]: This section is in the new ordinance under 10-2.5-20 and is proposed to include chronic nuisance in addition to public nuisance, with specific clarification around chronic nuisance.

10-2.5-18. Effect of Property Conveyance.

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

Commented [A27]: This section is in the new ordinance under 10-2.5-21 and is proposed to include chronic nuisance in addition to public nuisance.

Commented [A28]: A new subsection is proposed to the end of the new ordinance to permit the city manager to develop rules to administer this section.

Chapter 10-3 Rental Licenses

10-3-3. - Terms of Licenses.

- (a) License terms shall be as follows:

Licenses, other than reduced term licenses issued under Section 10-3-4, "Reduced Term 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 of the licensed property is transferred.

- (b) In addition to any other applicable requirements, new licenses and renewals shall require that the licensee submit to the city manager a complete application packet for the license, on forms provided by the manager. The application shall satisfy the following requirements:

- (1) A current rental inspection report (for a new license except as set forth in Section 10-3-5, "License Procedure for Newly Constructed Rental Property," B.R.C. 1981,) certifying compliance with those portions of Chapter 10-2, "Property Maintenance Code," and Section 9-9-16, "Lighting, Outdoor," B.R.C. 1981, for which the report form requires inspection and certification; and
- (2) The operator shall certify on the application forms provided by the manager that the operator has a current valid contract with a commercial trash hauler for removal of accumulated trash from the licensed property in accordance with Subsection 6-3-3(b), B.R.C. 1981; and

Commented [A29]: This section is proposed to have proof that any license application for a specific property not have current, existing violations of 10-2.5, generally.

- (c) The city manager shall issue separate licenses for individual buildings. Such licenses shall cover all dwelling units and rooming units within such buildings. In a building containing attached but individually owned dwelling units, or any other dwelling units which may be separately conveyed, the city manager shall issue separate licenses for each dwelling unit. A structure, or group of structures, shall be considered to be a single building if it has been assigned a single street address by the City. If a complex of buildings on one property is under common ownership, and this owner is willing to have a common expiration date for the licenses for all dwelling and rooming units, the city manager may consider the whole

complex to be the equivalent of a single building for the purposes of licensing and the fee 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.

10-3-4. - Reduced Term License.

- (a) The city manager shall issue a reduced term license whenever the city manager determines that:
 - (1) Violations of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, revealed 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;
 - (2) There is or has been a violation of a limitation on numbers of occupants or numbers of dwelling units found in Title 9, "Land Use Code," B.R.C. 1981, which demonstrates a failure to maintain the rental property in compliance with that title; or
 - (3) Violations of Section 9-9-16, "Lighting Outdoor," B.R.C. 1981, of a building or complex of buildings on the same property with multiple dwelling units that are all held under common ownership, revealed during an inspection or otherwise, demonstrate a failure to maintain the rental property in compliance with Title 9, "Land Use Code," B.R.C. 1981
- (b) The terms of a reduced term license shall be as follows:
 - (1) For violations of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, the license term shall be reduced to twenty-four months.
 - (2) For violations of Title 9, "Land Use Code," B.R.C. 1981, the license term shall be reduced to twelve months. A reduced term license issued to allow the operator to bring the rental property into compliance with Section 9-9-16, "Lighting Outdoor," B.R.C. 1981, may only be issued one time.
- (c) The city manager may issue a reduced term short-term rental license if the operator has received a penalty, suspension or other order pursuant to Section 10-3-16(a), "Administrative Remedy," B.R.C. 1981.
- (d) If an operator disagrees with the decision of the city manager to issue a reduced term license under subsection (a) of this section, such person may appeal the city manager's decision within thirty days after the issuance of the reduced term license, as follows:
 - (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.

Commented [A30]: This section, subsection (b), and (d) are proposed to include violations of 10-2.5. If violations have occurred under the current ownership, then the license is proposed to be reduced to continue monitoring any situations at that property.

- (2) For reduced term licenses issued as a result of violations of Title 9, “Land Use Code,” 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.

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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,” Section 108, “Unsafe Structures and Equipment,” and Section 109, “Emergency Measures,” B.R.C 1981, and notices given to the local agent shall be sufficient to satisfy any requirement of notice to the owner or the operator. The owner shall notify the city manager in writing of the appointment within five days of being required to make such an appointment, and shall thereafter notify the city manager of any change of local agent within fifteen days of such change.

Commented [A31]: This section is proposed to be amended to include notices for violations of 10-2.5.

...

10-3-16. - Administrative Remedy.

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

Commented [A32]: This subsection is proposed to include violations of 10-2.5.

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

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

- (i) For the first violation of the provision, \$500;
- (ii) For the second violation of the same provision, \$750; and
- (iii) For the third violation of the same provision, \$1,000;

(B) For a violation in any other area:

- (i) For the first violation of the provision, \$150;
- (ii) For the second violation of the same provision, \$300; and

Commented [A33]: This section is proposed to be removed as it does not align with current City values. All violations are proposed to be under the civil penalty structure outlined in subsection (B).

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

...

10-3-20. - Occupancy.

- (a) Every operator of any property with fewer than five dwelling units, shall at the time any dwelling unit is shown to any prospective renter, post conspicuously on the inside of the main entrance to each dwelling unit a sign listing a maximum occupancy number that shall be no greater than the maximum number of unrelated individuals permitted under Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981 in a form specified by the city

Commented [A34]: A new proposed subsection (d) is proposed here to respond to an administrative concern around reconsiderations. The language is:

(d) A license holder affected by the legal occupancy determination may file with the city manager a written request for reconsideration. Such request shall be filed within fourteen (14) days of such determination and shall set forth the facts and any evidence supporting the legal occupancy asserted by the licensee. The city manager shall respond to the request within thirty (30) days of the written request. The original determination shall remain in effect during the reconsideration period.

manager. Any such sign may include an occupancy limit smaller than that allowed by Section 9-8-5.

- (b) Each license shall include a notation of the legal occupancy, including the number of unrelated individuals permitted for each dwelling unit covered by the license. Acceptance of the license shall constitute a waiver of any claim for a non-conforming occupancy in excess of the occupancy stated on the license. The notation on the license shall also not provide the basis for an assertion of non-conforming occupancy.
- (c) Each advertisement for rental shall include a statement of the maximum occupancy, such statement shall include a number no greater than the number of unrelated individuals permissible pursuant to Section 9-8-5, B.R.C. 1981, of the dwelling unit to be rented. Any such advertisement may include an occupancy limit smaller than that allowed by Section 9-8-5.