



## AGENDA ITEM SUMMARY

City Council

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### STAFF

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Marcy Yoder, Neighborhood Services Manager  
John Feyen, Police Assistant Chief  
John Duval, Legal

### SUBJECT

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**Second Reading of Ordinance No. 136, 2022, Repealing and Reenacting Article IX of City Code Chapter 20 Concerning Public Nuisances and Making Conforming Changes to City Code Section 19-3.**

### EXECUTIVE SUMMARY

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This Ordinance, unanimously adopted on First Reading on November 15, 2022, adopts a new public nuisance ordinance (PNO) that allows for a clearer, broader definition of public nuisance and adds new enforcement mechanism for abating public nuisances and chronic nuisance properties. The new PNO will allow staff to address the current community issues and nuisance situations more effectively.

Councilmembers asked at First Reading whether the PNO needs to be amended since the voters recently approved Proposition 122 legalizing in Colorado the use, possession, and cultivation of “natural medicine,” which includes psilocybin mushrooms. The PNO does not need to be amended because Proposition 122 also approved amendments to the Colorado statutes criminalizing controlled substances to exempt natural medicine from their provisions. Consequently, the PNO provisions defining “nuisance activity” and “drug-related activity” to include the State’s crimes concerning controlled substances no longer include, by definition, the possession, use, and cultivation of natural medicine as now allowed by Proposition 122. The PNO therefore does not need to be amended.

### STAFF RECOMMENDATION

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Staff recommends adoption of the Ordinance on Second Reading.

### BACKGROUND / DISCUSSION

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#### Introduction

The City adopted in 2000 an ordinance for the abatement of public nuisances (PNO) to address the nuisance issues being experienced at that time with few significant amendments to the PNO since then. Many of the issues were in residential areas and were focused on noise nuisances and other nuisances outlined in the Code Chapter 20, such as tall weeds and grasses, rubbish, inoperable vehicles, etc.

Those issues continue to exist, but we have seen an expansion of nuisance issues that include drug-related activities, gatherings that result in assaults, firearms being discharged, animal control issues, fire

code issues including illegal fireworks and outdoor burning, building code violations, abandoned buildings, and obstruction of sidewalks and streets.

The proposed Ordinance would repeal the current PNO and reenact a new PNO which, if adopted, will expand the scope of public nuisances, add new enforcement tools, and simplify the administrative process for utilizing these tools.

### **History of Current Public Nuisance Ordinance**

Originally developed in early 2000, the purpose of the current PNO was to remedy chronic problems at properties in Fort Collins using a civil abatement process where citing specific, individual nuisance violations of the Code were found to be ineffective in abating the chronic problems that were adversely affecting neighborhoods

The current PNO ordinance in Municipal Code generally provides for the following enforcement steps to be taken before the civil abatement process can be used:

1. The City first identifies a property that might be becoming a public nuisance. This could happen in one of several ways, including complaints from neighbors or a neighborhood group, a large number of nuisance violations (resulting in citations issued) which begin to show a pattern to a staff member, or the police department noticing a chronic problem and calling it to the attention of the Code Compliance staff.
2. The Code Compliance Case Manager then collects data about the potential nuisance property to determine how serious and chronic the problem is in comparison to similar properties in the City. If the property has multiple violations, the City Attorney's Office would also help to decide whether cause exists to file a civil abatement action in Municipal Court. Also, to proceed with a civil abatement action under the current PNO, a citation must be issued for each nuisance.
3. Notice is sent by mail to the property owner and/or tenants when the City begins the process of monitoring a location as a possible public nuisance. This initial letter notifies of the issuance of a nuisance citation that represents the first of a qualifying violation for a civil abatement action under the current PNO and informing the parties that two (2) additional cited violations within 12 months (3 total) or 4 additional cited violations within 24 months (5 total) could result in the filing of a public nuisance action. During this time, the Case Manager would encourage the owner to work with the City, any tenants, and possibly neighbors to develop a voluntary mitigation/abatement plan or agreement to avoid future problems.

The focus of the current PNO has been to work with property owners to voluntarily resolve nuisances; however, if the owner is unwilling to resolve the problem through an abatement plan, the PNO provides the City with only the ability to file a civil abatement action against the owner in Municipal Court. Remedies would then be limited to obtaining a civil abatement order to compel the owner to abate the nuisance and a civil judgment to recover the City's costs in pursuing the civil abatement process.

This might include such things as ordering a particular tenant to be evicted, clean-up the property, or order that a certain person not engage in a certain kind of behavior. The process can also potentially result in a misdemeanor charge if someone knowingly ignored or disobeyed the Court's order. For example, if someone was ordered by the Court to clean up a property and did not follow the order, that person could then be prosecuted in Municipal Court, but only after the City has obtained the civil abatement order.

In practice, the utilization of the current PNO has been limited in recent years. This is partly a result of Code Compliance's focus on and high success rate of achieving voluntary compliance in the correction of most nuisance violations. Most of Code Compliance's cases do not ultimately result in the issuance of citations. However, more recently the scope of nuisance types that can be addressed in the current PNO is not broad enough to address the current community issues. Additionally, the prior case management

process for public nuisance actions has proven to be administratively burdensome due to the requirements around tracking and individualized noticing to property owners for each violation that occurred that can form the basis for the current civil abatement action.

City staff has therefore recently analyzed the current PNO and determined that an update to it is necessary in order to address the current nuisance issues and to add new processes and enforcement tools that are more practical from both an enforcement and administrative standpoint. For example, this includes expanding the proposed PNO to apply to “nuisance activities” that include criminal violations under the City’s Code and state law and building and fire code violations.

**Research**

A review of other cities’ public nuisance and chronic nuisance property ordinances was conducted to gain a better understanding of how other jurisdictions are addressing and resolving their public nuisances and chronic nuisance properties. The jurisdictions we contacted in Colorado were Boulder and Parker. The Town of Parker is currently the only other jurisdiction in the state with a chronic nuisance property ordinance. Outside of Colorado, we reviewed the chronic nuisance ordinances in the following cities: Cincinnati, OH; Kansas City, MO; Spokane, WA; Seattle, WA; Portland, OR; Elgin, IL; Springfield, IL; and Milwaukee, WI.

<b>Jurisdiction</b>	<b>Definition of chronic nuisance property</b>
Parker, CO	3 or more occasions where nuisance activity is observed in 60 days or 7 or more in 12 months
Cincinnati, OH	3 or more nuisance activities occurred at the premises in a 30-day period
Kansas City, MO	3 or more police responses to nuisance activity in 30 days, 7 or more in 180 days
Spokane, WA	3 or more nuisance activities observed on a property in 60 days, 7 or more in 12 months
Seattle, WA	3 or more nuisance activities exist or have occurred on a property in 60 days, 7 or more in 12 months
Portland, OR	3 or more nuisance activities exist or have occurred on a property in 30 days
Elgin, IL	3 or more instances of any one or any combination of nuisance activity in 12 months based upon 3 separate factual events that have been independently investigated
Springfield, IL	3 or more separate inspections or incidents w/in 24 months that have been the source of 3 or more violations as determined by an admin hearing officer; OR 2 or more of certain criminal activities in a 60-day period or 3 or more in a 365-day period
Milwaukee, WI	3 or more responses from the police department for "nuisance activities" in 30 days

Based on our findings, we determined the appropriate threshold to establish a chronic nuisance property is 3 or more nuisance activities exist or have occurred on a property within a 90-day period or 7 or more nuisance activities within a one-year period.

**Proposed Public Nuisance Ordinance**

- *Public Nuisance, Chronic Nuisance Property, & Nuisance Activity*

The proposed PNO regulates two types of nuisances: (i) a “public nuisance”; and (ii) a “chronic nuisance property”. The existence of each of them depends on the occurrence or existence of multiple

or continuing “nuisance activities” on a property.

A “nuisance activity” is defined in the PNO to include 66 categories of various criminal and civil violations happening on the property that individually or in combination result in either a public nuisance or chronic nuisance property. These nuisance activities include:

- civil infractions under the City Code, such as tall weeds and grass, rubbish, and inoperable motor vehicles;
- minor misdemeanor violations under the City Code, such as unreasonable noise, bodily waste, and nuisance gatherings;
- more serious misdemeanor violations under the City Code, such as resisting arrest, assault, disorderly conduct, and building and fire code violations; and
- misdemeanors and felonies under State law, such as criminal mischief, assault, harassment, arson, firearms offenses, and drug-related offenses.

A “public nuisance” is more generally defined, while the definition of a “chronic nuisance property” is tied to a certain number of nuisance activities occurring on a property within a set period.

A “public nuisance” exists when repeated nuisance activities (meaning more than one) have occurred on the property or a continuing nuisance activity exists on it causing an unreasonable risk of harm or injury to the public health, safety, or welfare. This would include circumstances where the nuisance activities are unreasonably injuring, damaging, annoying, inconveniencing, or disturbing the peace of any member of the public with respect to their: (i) comfort, health, repose, or safety; or (ii) free use and comfortable enjoyment of their property and of sidewalks, streets, or other public spaces near the offending property.

A “chronic nuisance property” exists when:

- 3 or more nuisance activities have occurred on the property within 90 days, or 7 or more nuisance activities have occurred within 1 year, with each activity occurring on a separate day, but not applicable to a property having multiple residential units under common ownership (i.e., apartment complex);
- there are multiple residential units on the property under common ownership and 6 or more nuisance activities have occurred within 90 days or 10 or more nuisance activities have occurred within 1 year, with each activity occurring on a separate day;
- 2 or more nuisance activities involving drug-related activity have occurred on the property within 30 days, with each activity occurring on a separate day; or
- the property is an “abandoned property” and any number of nuisance activities have occurred or exist on it. An “abandoned property” is defined as a property where no one is asserting or claiming any ownership or legal control over it.

- *Enforcement Tools*

The proposed PNO is designed to provide the City with alternative tools for enforcement depending on the circumstances.

The most basic of the tools is to provide the property owner and others in possession of the property, such as tenants, with written notice of the existence of the public nuisance or chronic nuisance property. The purpose of the notice is to give the owner and others noticed the opportunity to abate the nuisance activities promptly and voluntarily or to work with the City in coming up with a plan to do so.

If the notice is unsuccessful in getting the cooperation of the person(s) responsible for the property, the next step might be to issue a citation to the noticed persons for a civil infraction. The punishment for

the infraction would be a penalty assessment of \$250 for the first offense, \$500 for a second offense within 60 days, \$1,000 for a third offense within 120 days, and \$2,000 for fourth and subsequent offenses within 1 year. If the person cited does not voluntarily pay the penalty assessment stated in the citation, the civil infraction would be tried in Municipal Court.

If the notice and any citations for the penalty assessment civil infraction are unsuccessful in remedying and stopping the nuisance activities, the next step might be to consider issuing a citation to the property owner or other responsible persons for a misdemeanor offense. This offense would be subject to the City's same maximum penalties it imposes for other misdemeanors, which are a fine and court surcharge not to exceed \$3,000 or 180 days in jail, or both.

Whether the responsible persons are cited for a civil infraction or misdemeanor offense, each separate day a public nuisance occurs or exists on a property, or the property continues to be a chronic nuisance property, is considered a separate infraction or offense.

If the notice and any citations for the civil infraction and misdemeanor offense are unsuccessful, the tool remaining in the PNO would be for the City to file a civil abatement action in Municipal Court against the property owner and any other responsible persons. Under this civil proceeding, the City would be asking the Court to issue temporary and permanent abatement orders requiring the owner and other responsible persons to abate the public nuisance or chronic nuisance property. The Court would be able to enforce its order under its contempt powers. Also, if an abatement order is issued and the person against whom it is directed fails to obey it, that is considered a misdemeanor violation under which the person could be arrested and prosecuted.

The City may also ask for the Court in the civil action to impose a civil penalty of not less than \$100 but not more than \$1,000 for each day the public nuisance or chronic nuisance continued to exist after the City served the initial notice to abate these conditions of the property. The City will then be entitled to a judgment for this civil penalty amount plus all its other costs, including attorney fees, that it incurred in pursuing its remedies under the PNO.

- *Other Significant PNO Provisions*

The proposed PNO continues to include important and significant provisions that exist in the current PNO. These include:

- Preserving for the City's code enforcement officers the legal authority to enter the property to abate nuisances without a warrant when authorized under the Fourth Amendment.
- Preserving for code enforcement officers the legal authority to obtain a search warrant to inspect the property and abate a nuisance consistent with the Fourth Amendment.
- Stating that the PNO is not intended to limit or prohibit the City or anyone else to pursue other remedies to abate a nuisance as are available under any other laws.
- Preserving City's ability to file a lien against the property for the costs the City incurs in abating a nuisance.

The proposed PNO also adds new significant provisions, and these are:

- Describes the proof standards to be applied by the Municipal Court in determining whether an alleged nuisance activity occurred on the property – in criminal proceedings proof beyond a reasonable doubt and in civil proceedings proof by a preponderance of the evidence.
- States that misdemeanor and civil infraction violations under the PNO will be strict liability offenses not requiring proof of culpable mental state, making these offenses easier to prove.

- States the City is not required in proving a nuisance activity to prove that any person was cited, held liable for, or convicted in any court of the civil or criminal charge underlying the nuisance activity. However, the City will still be required to prove that the nuisance activity occurred by other evidence.
- States that if a person is held liable for or convicted in the courts for the charge underlying the nuisance activity and that decision is final, this is to be deemed conclusive evidence by the Municipal Court in proceedings under the PNO that the nuisance activity occurred, but the City will still be required to prove the activity occurred on the property.
- Allows the Municipal Court to consider as a mitigating factor in proceedings under the PNO that the defendant was the victim or person harmed by the nuisance activity or activities forming the basis for the public nuisance or chronic nuisance property, but only if the Court also finds: (i) the defendant or someone acting on their behalf promptly reported the nuisance activity to law enforcement; and (ii) at the time of the activity, the defendant had reasonably effective means in place to prevent nuisance activities occurring on the property or to manage them if prevention not reasonably practicable. These means may include security cameras, security services, fencing, on-site personnel, and any other services, equipment, or facilities having as their function to prevent nuisance activities from happening on the property.

Under Article VII, Section 1 of the City Charter, any new rules of procedure to be used in Municipal Court can only be adopted by City Council if recommended by the Chief Municipal Judge. Chief Judge Jill Heuser has reviewed the provisions in the PNO pertaining to the rules of procedure to be used in civil abatement actions under the PNO. Judge Heuser is recommending to the Council that it adopt these provisions.

**Conclusions**

Staff recommends the adoption of the proposed PNO as it will allow the City to more readily address the types of nuisance issues that the community is currently experiencing.

**CITY FINANCIAL IMPACTS**

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None.

**BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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None.

**PUBLIC OUTREACH**

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Not applicable.

**ATTACHMENTS**

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First Reading attachments not included.

1. Ordinance for Consideration