

TENTH DRAFT

(10-25-22)

ORDINANCE NO. , 2020 OF THE COUNCIL OF THE CITY OF FORT COLLINS REPEALING AND REENACTING ARTICLE IX OF CODE CHAPTER 20 CONCERNING PUBLIC NUISANCES

WHEREAS, in 2000, the City Council adopted Ordinance No. 28, 2000, to add Article IX to Chapter 20 of the Code (“Article IX”) to establish a process for abating public nuisances by the City filing a civil action in Municipal Court asking the Court to issue civil orders requiring the property owner or others responsible to abate the public nuisance; and

WHEREAS, the aim and focus of the IX was primarily to add an enforcement tool to those already available to address nuisances on privately-owned properties, such as noise violations, rubbish accumulation, tall weeds and grass, inoperable motor vehicle, and similar activities that affected the health, safety, and welfare of nearby properties and the public in general; and

WHEREAS, the intent was to use this enforcement tool for those properties having chronic-public-nuisance problems that were not being resolved by the then existing enforcement tools; and

WHEREAS, there have not been any significant amendments to Article IX since 2000, so the only tool it currently provides is the civil abatement process: and

WHEREAS, since 2000 the City’s population has grown from just over 118,000 to over 170,000 and with this growth has come increased crime, including a significant increase in the number, severity, and dangerousness of activities on and conditions of privately-owned properties that threaten and harm the health, safety, and welfare of nearby properties, neighborhoods, and the public in general; and

WHEREAS, these more recent problematic activities and conditions have included the occurrence of more serious crimes, such as unlawful drug use, firearm violations, assaults, harassment, human wastes, and similar offenses; and

WHEREAS, Article IX has proven ineffective in preventing or abating these activities and conditions on properties due to its narrow scope, its lack of alternative enforcement tools, and because it has proven difficult to apply and use administratively as an enforcement tool; and

WHEREAS, City staff has researched what other communities experiencing nuisance problems similar to the City’s have used as enforcement tools to prevent and abate these newer types of nuisances; and

WHEREAS, based on that research, City staff is recommending this Ordinance to expand the type of enforcement tools the City may use, to expand the type of activities and conditions on properties that constitute nuisance activities, and to provide enforcement processes that are administratively easier to use; and

TENTH DRAFT

(10-25-22)

WHEREAS, Chief Municipal Judge Jill Hueser has also reviewed the provisions of this Ordinance pertaining to the rules of procedure to be used by the Municipal Court in the civil abatement process and, pursuant to Section 1 of Charter Article VII, she is recommended to City Council that it adopt these provisions; and

WHEREAS, the Council has determined, and now finds, that the adoption of this Ordinance is necessary for the health, safety, and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Article IX of Chapter 20 of the Code of the City of Fort Collins is hereby repealed and reenacted to read as follows:

ARTICLE IX. PUBLIC NUISANCES

Division 1. General

Sec. 20-110. Legislative purpose.

The abatement of local public nuisances for the protection of public health, safety, and welfare is a matter of purely local and municipal concern. The purpose of this Article is to eliminate public nuisances. The remedies provided in this Article are designed to eliminate public nuisances by removing property from a condition or conditions that either create an immediate need for abatement to protect the public health, safety, or welfare, or lead to consistent and repeated violations of state or municipal law. Another purpose of this Article is to require persons owning, leasing, or otherwise in control of property to be vigilant in preventing public nuisances on and in their property, to make them responsible for the use of their property by themselves, occupants, and trespassers, and to otherwise deter public nuisances.

Sec. 20-111. Definitions.

Unless the context clearly requires otherwise, the following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Abandoned property means a property over which the person owning, leasing, or otherwise in control of the property, or the agent of such person, no longer asserts control due to death, incarceration, or any other reason, and which property is either unsecured or subject to occupation by trespassers or other unauthorized individuals.

Abate means to bring to a halt, eliminate, prevent, or, where that is not reasonably practicable, to suppress, mitigate, or reduce.

TENTH DRAFT

(10-25-22)

Abatement agreement means a written contract between the City and a person owning or leasing a property on which there is a public nuisance or that has become a chronic nuisance property, or the agent of such person, in which contract the person agrees to timely take all corrective actions to abate the public nuisance or chronic nuisance property and to prevent them from reoccurring as agreed in the contract. Such corrective actions may include, without limitation and as applicable:

1. Effective tenant screening, leasing, and rule enforcement;
2. Implementing physical improvements for crime prevention;
3. Providing security for the property;
4. Evicting persons responsible for the nuisance activity;
5. Pursuing other remedies available under any lease or other agreement applicable to the property;
6. Promptly reporting nuisance activities to law enforcement; and
7. Regular cleaning, maintenance, and repair of the property and the buildings located on it.

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

Building means a structure with the capacity to contain, and is designed for the shelter of, humans, animals, or personal property of any kind. *Building* shall include, without limitation, any house, office building, store, warehouse, or any other residential or nonresidential structure of any kind, whether or not such structure is permanently affixed to the ground upon which it is situated, and any trailer, semi-trailer, trailer coach, mobile home, or other vehicle designed or used for occupancy by persons for any purpose.

Chronic nuisance property means:

1. A property where three (3) or more nuisance activities have occurred within a ninety (90) day period or seven (7) or more nuisance activities have occurred within a one (1) year period, with each activity occurring on a separate day, but this shall not include a property on which is more than one (1) residential unit that are all under common ownership;
2. A property that is more than one (1) residential unit that are all under common ownership where six (6) or more nuisance activities have occurred within a ninety (90) period or ten (10) or more nuisance activities have occurred within a one (1) year period, with each activity occurring on a separate day.

TENTH DRAFT

(10-25-22)

3. A property where two (2) or more nuisance activities involving drug-related activity have occurred within a thirty (30) day period, with each activity occurring on a separate day; or
4. Any abandoned property where any number of nuisance activities have occurred or exist.

Code enforcement officer means an individual appointed by the chief of police pursuant to Code § 2-503(b)(2) to enforce the provisions of this Article and City police officers authorized to enforce the Code as provided in § 2-503(b)(1).

Drug-related activity means any activity at a property which is an offense under Part 4 in Article 18 of C.R.S. Title 18, which offenses include, without limitation, the unlawful manufacture, cultivation, growth, production, delivery, sale, storage, possession, use, or giving away of any controlled substance and possession of drug paraphernalia.

Lessee means a person having a possessory interest in a property under an oral or written lease agreement.

Municipal court or *court* means the municipal court of the City as established in Article VII, Section 1 of the Charter.

Municipal judge means any judge of the Fort Collins municipal court appointed by the City Council as provided in Article VII, Section 1 of the Charter.

Notice to abate means a written notice issued by a code enforcement officer as provided in § 20-113.

Nuisance activity means any of the following violations and nuisances occurring or existing on a property and committed by any person, including, without limitation, by an owner, lessee, agent, occupant, or trespasser:

1. Disorderly conduct - Code § 17-124.
2. Social host and underage use or possession of alcohol or marijuana - Code § 17-168.
3. Unreasonable noise - Code § 17-129.
4. Nuisance gatherings - Code §§ 17-131 and 17-132.
5. Camping on private property - Code § 17-182.
6. Violations of the 2021 International Fire Code – Code §§ 9-1 and 9-2.
7. Marijuana cultivation - Code § 12-142.
8. Dwelling unit occupancy limits - § 3.8.16 of the Fort Collins Land Use Code.
9. Animal violations - Divisions 4 and 5 of Code Chapter 4.
10. Hazardous waste disposal - Code § 12-21.
11. Hemp violations - Code §§ 12-222 and 12-23.
12. Abandoned refrigerators and similar items - Code § 17-81.
13. Discharging weapons - Code § 17-101.
14. Throwing of missiles - Code § 17-102.
15. Bodily waste - Code § 17-103.

TENTH DRAFT

(10-25-22)

16. Disturbing the peace - Code § 17-121.
17. Harassment - Code § 17-126.
18. Open container - Code § 17-141.
19. Public nudity - Code § 17-142.
20. Inhaling toxic vapors - City Code § 17-162.
21. Underage possession or use of alcohol - Code § 17-167.
22. Use and possession of marijuana - City Code § 17-191.
23. Use of alcohol for cannabinoid extraction from marijuana - Code § 17-194.
24. Air pollution nuisances - City Code § 20-1.
25. Noise violations - Article II of Code Chapter 20.
26. Exterior property maintenance nuisances - Article III of Code Chapter 20.
27. Weeds, unmowed grasses, refuse, rubbish, outdoor furniture, and outdoor storage nuisances - Article IV of Code Chapter 20.
28. Inoperable motor vehicle violations - Division 2 in Article VI of Code Chapter 20.
29. Parking and vehicle storage nuisances - Article VIII of Code Chapter 20.
30. Care and protection of trees, shrubs, and other vegetation - Division 3 in Article II of Code Chapter 27.
31. Assault - Code § 17-21.
32. Criminal mischief - Code § 17-39.
33. Littering - Code § 17-41.
34. Interference with public officers - Code § 17-63
35. Resisting arrest - Code § 17-64.
36. Theft – Code § 17-36.

38. Activities on the property causing the obstruction of adjacent highways, streets, sidewalks, or any other public place for the passage of individuals or vehicles so as to violate § 17-128 or §§ 1202, 1203, or 1204 of the Fort Collins Traffic Code as adopted in § 28-16.
39. Violations of Open Fire and Burning Restrictions – Article II of Code Chapter 9.
40. Violations of the 2021 International Building Code – Code §§ 5-26(a) and 5-27.
41. Violations of the 2021 International Residential Code – Code §§ 5-26(c) and 5-30.
42. Violations of the 2021 International Property Maintenance Code – Code §§ 5-46 and 5-47.
43. Violations of the Rental Housing Standards – Article VI, Division 1 of Code Chapter 5.
44. Criminal offenses against persons - Article 3 of Title 18 of the Colorado Revised Statutes (C.R.S.), except not including sexual assault defined in C.R.S. § 18-3-402 and stalking defined in C.R.S. § 18-3-602.
45. Crimes of arson - Part 1 of Article 4 in C.R.S. Title 18.
46. Crimes of robbery - Part 3 of Article 4 in C.R.S. Title 18.
47. Theft - C.R.S. § 18-4-401.

49. Crimes against children - Part 4 of Article 6 in C.R.S. Title 18.
50. Harboring a minor - C.R.S. § 18-6-601.
51. Contributing to the delinquency of a minor - C.R.S. § 18-6-701.
52. Crimes related to prostitution - Part 2 of Article 7 in C.R.S. Title 18.

TENTH DRAFT

(10-25-22)

53. Crime of public indecency - C.R.S. § 18-7-301.
54. Crime of indecent exposure - C.R.S. § 18-7-302.
55. Crimes related to child prostitution - Part 4 of Article 7 in C.R.S. Title 18.
56. Resisting arrest - C.R.S. § 18-8-103.
57. Obstructing a police officer, firefighter, etc. - C.R.S. § 18-8-104.
58. Disorderly conduct - C.R.S. § 18-9-106.
59. Harassment - C.R.S. § 18-9-111.
60. Cruelty to animals - C.R.S. § 18-9-202.
61. Unlawful ownership of dangerous dog - C.R.S. § 18-9-204.5.
62. Crimes related to firearms and weapons - Part 1 of Article 12 in C.R.S. Title 18.
63. Unlawful discarding or abandonment of iceboxes, motor vehicle, and similar items - C.R.S. § 18-13-106.
64. Hazardous waste violations - C.R.S. § 18-13-112.
65. Providing tobacco products to underage persons - C.R.S. § 18-13-121.
66. Underage possession and use of alcohol and marijuana - C.R.S. § 18-13-122.
67. Crimes related to controlled substances, marijuana, and other substances - Part 4 of Article 18 in C.R.S. Title 18.
68. Crimes related to burglary and related offenses – Part 2 of Article 4 in C.R.S. Title 18.

Occupant means a person occupying, residing in, or using a property with the consent of the owner or lessee, or of their agent, as applicable, which shall include, without limitation, *invitees*, *licensees*, and *social guests* as these words and term are defined in the Colorado Premises Liability Act.

Owner means a person having a fee title ownership interest in a property.

Person means any individual, corporation, association, firm, joint venture, estate, trust, business trust, syndicate, fiduciary, partnership, limited partnership, limited liability company, and body politic and corporate, and all other groups and combinations.

Property means a contiguous parcel, tract, lot, or other area of land established or described by plat, subdivision, or metes and bounds description in common ownership which is permitted by law to be used, occupied, or designed to be occupied by one (1) or more buildings or uses. *Property* also means any building, or individual residential unit within a building, located on an any such area of land, that is in common ownership, but shall not include such land, buildings, and residential units owned by the Board of Governors of the Colorado State University System or utilized by Colorado State University for the housing of students or faculty or for other educational purposes.

Public nuisance or *nuisance* means any repeated or continuing nuisance activity, or combination of nuisance activities, occurring or existing on a property that creates an unreasonable risk of harm or is injurious to the public health, safety, or welfare, to include, without limitation, a nuisance activity, or combination of nuisance activities, that unreasonably injures, damages, annoys, inconveniences, or disturbs the peace of members of the public of normal sensibility with respect to their comfort, health, repose, or safety, or with respect to the free use and comfortable enjoyment of their property or of sidewalks, streets, or other public spaces near and around the offending

TENTH DRAFT

(10-25-22)

property.

Relative means an individual related by consanguinity within the third degree as determined by common law, a spouse, or an individual related to a spouse within the third degree as so determined and includes an individual in a step or adoptive relationship within the third degree.

Residential unit means any building or portion of a building designed, occupied, or intended for occupancy as separate quarters for the exclusive use of one or more individuals for living, sleeping, cooking, and sanitary purposes.

Trespasser means a person who enters or remains on the property of another person without that other person's consent.

Sec. 20-112. Entry of property and abatement of public nuisance.

(a) A code enforcement officer with probable cause to believe a public nuisance exists on a property may enter onto it without a warrant to inspect and abate any existing public nuisance and prevent the nuisance from recurring provided the same may be accomplished without entering a building on the property, entering the curtilage of a residential building on the property, or entering an area of the property enclosed by a privacy fence or similar enclosure. If the suspected public nuisance is within a building, the curtilage of a residential building, or enclosed by a privacy fence or similar enclosure, a code enforcement officer may enter such areas only with the consent of the owner, lessee, agent, or occupant, as applicable, or after obtaining a warrant as provided in subsection (c) of this Section.

(b) If entry is refused by the owner, lessee, agent, or occupant, as applicable, or they cannot be located after a reasonable effort, the code enforcement officer shall either personally serve the owner, lessee, agent, or occupant, as applicable, if they are located or, if not located, post on the property in a conspicuous location a written notice of intention to inspect not sooner than twenty-four (24) hours after the time specified in such notice. The notice shall state that the owner, lessee, agent, or occupant, as applicable, has the right to refuse entry, and if such entry is refused, inspection may be made only upon issuance of a search warrant by a municipal judge, or by a judge of any other court having jurisdiction.

(c) After the expiration of the twenty-four-hour period from the serving or posting of the notice of intent to inspect, the code enforcement officer may appear before a municipal judge or a judge of any other court having jurisdiction and, upon a showing of probable cause by written affidavit, obtain a search warrant entitling the code enforcement officer to enter the building, curtilage area, or fenced area, as applicable, to inspect the property, abate any nuisance, and prevent the nuisance occurring again. Upon presentation of the search warrant and proper credentials to any persons in possession of the property, or possession of the warrant in the case of an unoccupied property, the code enforcement officer may enter the building, the curtilage area, or fenced area, as applicable, and may use such reasonable force as may be necessary to gain entry to inspect the property, abate any nuisance, and prevent the nuisance occurring again.

TENTH DRAFT

(10-25-22)

(d) It is unlawful for any owner, lessee, agent, or occupant of the building or on the property to deny entry to a code enforcement officer or to resist reasonable force used by such officer acting pursuant to a search warrant issued pursuant to this Section.

(e) Whenever a public nuisance exists on a property that constitutes an emergency immediately threatening the life or safety of any person or other exigent circumstance exists, a code enforcement officer may enter any building on the property or any other portion of the property without a search warrant as reasonably necessary to abate the public nuisance constituting the emergency and prevent it from occurring again, and the code enforcement officer may use such reasonable force as is necessary to enter the building or onto the property to do so.

Sec. 20-113. Notice to abate.

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

(1) Within twenty-four (24) hours of the issuance of the notice if the nuisance poses an imminent and substantial risk of damaging other property (including personal property of any other person), injuring any individual, or threatening the public health or safety; or

(2) Within seven (7) days for all other public nuisances, or such longer period of time as the code enforcement officer determines is appropriate if, based on the facts and circumstances, the nuisance could not reasonably be abated within seven (7) days.

(b) If the owner, lessee, or agent, as applicable, fails to abate the nuisance within the time stated in the notice to abate, the code enforcement officer may remove or abate the nuisance from the property without delay as provided in § 20-112 or take such other action or actions as are authorized in this Article.

(c) Except as required for issuing a citation for a misdemeanor offense under § 20-125 and a civil infraction under § 20-130, a code enforcement officer and the City may take enforcement action to abate a public nuisance as authorized in this Article and any other provisions of this Code without first serving or posting a notice to abate.

(d) The code enforcement officer may serve the notice to abate by any of the following methods:

(1) Personal service of the notice to the owner, lessee, or agent, as applicable;

(2) Mail a copy of the notice by first class mail to the last known address of the owner as reflected in the records of the Larimer County Treasurer;

(3) Mail a copy of the notice by first class mail to the owner, lessee, or agent at their last known address(es) within the City's records or as found in other publicly available records; or

TENTH DRAFT

(10-25-22)

(4) Post a copy of the notice in a conspicuous place at the entrance of the property or entrance of any buildings on the property.

(e) The notice to abate shall include:

(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 in this Article;

(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 § 20-118; and

(5) A statement that, if the City's cost of abatement is not paid, a lien shall attach to the property as provided in § 20-118 until such cost and accrued interest is paid in full.

Sec. 20-114. Remedies under other laws unaffected.

Nothing in this Article shall be construed as limiting or forbidding the City or any other person from pursuing any other remedies available at law or in equity concerning a public nuisance on a property.

Sec. 20-115. Limitation of actions.

(a) Actions under this Article concerning a public nuisance shall be commenced no later than one (1) year after: (i) the public nuisance or the last in a series of acts or omissions, or combination of both, constituting the public nuisance occurs, or (ii) the notice to abate is served or posted as provided in § 20-113, whichever is later.

(b) Actions under this Article concerning a chronic nuisance property shall be commenced no later than one (1) year after: (i) the last nuisance activity occurs that causes the property to be a chronic nuisance property, or (ii) the notice of chronic nuisance property is served as provided in § 20-135, whichever is later.

(c) These limitations shall not be construed to limit the introduction of evidence of acts or omissions that occurred more than one (1) year before such limitation period for the purpose of establishing the existence of a public nuisance, existence of a chronic nuisance property, when relevant to show a pattern of conduct, or for any other purpose.

Sec. 20-116. Effect of property conveyance.

When fee title to a property is conveyed from one (1) person to another or a property is leased or subleased from one (1) person to another, any nuisance activity that occurred or is existing on the property at the time of the conveyance, lease, or sublease which could be used under this Article

TENTH DRAFT

(10-25-22)

to prove that a public nuisance exists regarding such property or that the property is a chronic nuisance property, shall not be so used unless a reason for the conveyance, lease, or sublease was to avoid the property being subject to an enforcement action under this Article. It shall be a rebuttable presumption that a reason for the conveyance, lease, or sublease was to avoid the property being the subject of an enforcement action under this Article if: (1) the property was conveyed, leased, or subleased for less than fair market value; (2) the property was conveyed, leased, or subleased to an entity or entities controlled directly or indirectly by the person conveying, leasing, or subleasing the property; or (3) the property was conveyed, leased, or subleased to a relative(s) of the person making the conveyance, lease, or sublease.

Sec. 20-117. Municipal court jurisdiction.

Pursuant to Article XX, Section 6, and Article VI, Section 1 of the Colorado Constitution, and Article VII, Section 1 of the Charter, the municipal court is hereby granted the jurisdiction, duties and powers to hear and decide all causes arising under this Article, and to provide the remedies specified in this Article and in any other applicable provisions of the Code.

Sec. 20-118. Assessment, collection, and lien for abatement costs.

(a) If the City acts under § 20-112, an abatement agreement, or Division 5 of this Article to abate a public nuisance, chronic nuisance property, or any nuisance activity on a property, the owner of the property shall be liable to the City for the City's total internal and external costs incurred in the abatement. The City's internal costs shall be set and assessed under a written schedule of fees approved by the City Manager, which fees shall be based on a reasonable estimate of the City's direct and indirect internal costs to abate a nuisance, as amended from time to time. External costs shall include all amounts the City paid a vendor or contractor to assist in the abatement.

(b) After the abatement is completed, the City shall send the owner of the property an invoice itemizing and totaling the City's internal and external costs for the abatement. The invoice shall be mailed by first class mail addressed to the owner at the address of the property abated and to the last known address of the owner as reflected in the records of the Larimer County Treasurer. The invoice shall also be mailed by first class mail to any known agent of the owner at their last known address(es) within the City's records or as found in other publicly available records. The total costs so invoiced shall be paid to the City by the owner or their agent within forty-five (45) days of the date of the invoice. If not paid when due, the total assessed cost shall accrue interest at the rate of eight percent (8%) compounded annually.

(c) The City's assessed total cost of abatement, as stated in the invoice sent under this Section, plus the interest accruing thereon, shall be deemed a perpetual lien imposed upon the property from the date such assessed cost became due until paid and shall have priority over all other liens, except general taxes and prior special assessment liens. The Financial Officer, or their designee, is authorized to thereafter certify to the Larimer County Treasurer the list of delinquent assessments so billed, giving the name of the owner as it appears of record, the number of the lot and block and the amount of the assessment plus interest accrued to that date. The certification shall be the same in substance and form as required for the certification of other taxes. The

TENTH DRAFT

(10-25-22)

County Treasurer, upon receipt of such certified list, is hereby authorized to place it upon the tax list for the current year and to collect the assessment and interest in the same manner as general property taxes are collected together with any charges as may by law be made by the County Treasurer and all laws of the state for the assessment and collection of general taxes, including the laws for the sale of property for unpaid taxes and the redemption thereof, shall apply to and have full force and effect for the collection of all such assessments and interest.

(d) If the offending property is not subject to taxation or for any other reason, the City may elect alternative means to collect the amounts due pursuant to this Article, including the commencement of a judicial action at law or in equity, to include, without limitation, commencement of a civil action in Larimer County District Court to judicially foreclose the lien and, after judgment, pursue such remedies as are provided by law.

Sec. 20-119. Presumption and owner responsibility.

Any person who has possession or control of a property as an owner, lessee, agent, or occupant where any nuisance activity exists or has occurred shall be presumed under this Article to be the person causing or allowing the nuisance activity unless the circumstances and evidence clearly indicate otherwise. Notwithstanding this presumption and any other provision of this Article, nothing herein shall be construed to release the owner of a property on which there is a public nuisance or that has become a chronic nuisance property from the legal obligations and responsibilities they have under this Article and any other laws to prevent their property from becoming a public nuisance or chronic nuisance property and to abate any nuisance activity occurring or existing on their property.

Sec. 20-120. Strict Liability.

All misdemeanor offenses under this Article and the civil infraction under § 20-130 shall be strict liability offenses requiring no culpable mental state of any type or degree.

Sec. 20-121. Proof of nuisance activities.

In any criminal proceeding under this Article, the City shall have the burden of proving beyond a reasonable doubt that any alleged nuisance activity occurred on the property, including proving all the elements of the offense constituting the nuisance activity except as hereafter provided. In any civil proceeding under this Article, the City shall have the burden of proving by a preponderance of the evidence that any alleged nuisance activity occurred on the property, including proving all the elements of the offense constituting the nuisance activity except as hereafter provided. However, the City shall not be required in either case to prove that a person was cited, held liable for, or convicted in municipal or any state court for the civil or criminal charge underlying that nuisance activity. If, however, a person is held liable for or convicted of the civil or criminal charge underlying the alleged nuisance activity and such decision is final, that decision shall be deemed by the municipal court as conclusive evidence the nuisance activity occurred and the City need only prove the nuisance activity occurred on the property.

Sec. 20-122. Mitigating factor.

TENTH DRAFT

(10-25-22)

If the owner, lessee, agent, or occupant who is a party-defendant in an action under this Article was the victim of or person harmed by the nuisance activity or activities that form the basis for the public nuisance on the property or for the property becoming a chronic nuisance property, the court may take this fact into consideration as a mitigating factor in determining such party's liability or guilt in such action, but only if the court also finds that: (i) the party or someone acting on their behalf promptly reported the nuisance activity or activities to the proper law enforcement agency; and (ii) at the time the activity or activities occurred, the party, or owner or lessee of the property, had reasonably effective means in place to prevent such activity or activities from occurring on the property or to manage them if prevention is not reasonably practicable. These means may include, without limitation, security cameras, security services, fencing, on-site personnel, and any other services, equipment, or facilities that have as their function to prevent, in whole or part, nuisance activities from occurring or existing on the property.

Reserved Sec. 20-123 through Sec. 20-124

Division 2. Criminal Action

Sec. 20-125. Misdemeanor Violation.

(a) It shall be a violation of this Article and a misdemeanor offense subject to the penalties of § 1-15 of this Code for any person to:

(1) Fail to remove and abate the public nuisance from the property within the time specified in the notice to abate after being served with the notice to abate as provided in § 20-113; or

(2) Interfere with or prevent, or attempt to interfere with or prevent, a code enforcement officer, other City employee, or City contractor from abating any public nuisance as authorized under this Article.

(b) 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 offense and prosecutable and punishable as a separate offense.

Reserved Sec. 20-126 through Sec. 20-129

Division 3. Civil Infraction

Sec. 20-130. Penalty assessment.

(a) In lieu of issuing a citation for a misdemeanor violation under § 20-125, a code enforcement officer may issue a civil penalty assessment notice for a civil infraction to any person for failing

TENTH DRAFT

(10-25-22)

to abate the public nuisance from the property within the time specified in the notice to abate after being served with the notice to abate as provided in § 20-113.

(b) The civil penalty assessment notice shall be a summons and complaint containing identification of the person cited, description of the public nuisance to be abated, and the applicable civil penalty assessment as set forth below in subsection (f) below, a requirement that the person pay the assessment or appear municipal court to answer the charge as set forth in the summons and complaint and a waiver of the right to a trial on the offense specified on the summons and complaint.

(c) If the person issued a civil penalty assessment notice chooses to acknowledge their liability, they may pay the specified assessment by mail or in person at the municipal court within the time specified in the notice. If they choose not to acknowledge their liability, they may appear as required in the notice. Upon trial, if the person is found liable, the civil penalty assessment imposed shall not be less than the amount set forth in the civil penalty assessment notice but not more than three thousand dollars (\$3,000), as determined by the court, and court costs may be assessed in addition to the penalty assessment.

(d) Civil infractions under this Section shall be enforced and tried in municipal court in accordance with the Rules for Civil Infractions in Article V of Code Chapter 19.

(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) The code enforcement officer shall designate in the penalty assessment notice the amount of the civil penalty assessment according to the following schedule:

- (1) For the first infraction at a property, a penalty assessment of two hundred and fifty dollars (\$250);
- (2) For a second infraction at a property within a sixty (60) day period, a penalty assessment of five hundred dollar (\$500);
- (3) For a third infraction at a property within a one hundred and twenty (120) day period, a penalty assessment of one thousand dollars (\$1,000); and
- (4) For a fourth and any subsequent infraction at a property within a one (1) year period, a penalty assessment of two thousand dollars (\$2,000) for each infraction.

Reserved Sec. 20-131 through 20-134

Division 4. Chronic Nuisance Property

TENTH DRAFT

(10-25-22)

Sec. 20-135. Notices for chronic nuisance property.

(a) Upon discovery that a property will become a chronic nuisance property if one more nuisance activity occurs on the property within the requisite time period, a code enforcement officer may issue and serve a written warning notice in the same manner provided for a notice to abate in § 20-113(d). Issuance of this warning notice shall not be a prerequisite to any proceedings under this Division 4.

(b) Upon discovery that a property has become a chronic nuisance property, a code enforcement officer shall issue and serve a notice of chronic nuisance property as provided in subsection (d) of this Section.

(c) The notice of chronic nuisance property is a lawful order. Each directive in it is a separate lawful order, and failure to obey any directive is subject to the penalties set forth in § 20-137.

(d) The notice of chronic nuisance property shall be deemed properly served if personally served on the owner of the property or sent by first class mail to the owner at the owner's address as stated in the records of the Larimer County Treasurer. If the notice is returned as undeliverable, the notice shall be deemed properly served if it is thereafter posted in a conspicuous place on the property. The notice shall contain the following information:

- (1) the street address or a legal description sufficient for identification of the property;
- (2) a factual description of the nuisance activities that have occurred on the property, including the dates of the nuisance activities;
- (3) a statement that the property owner must respond to the notice within ten (10) days of the date of the owner's receipt of the notice or date of the posting, whichever is later, with a written plan to abate the nuisance activities;
- (4) a statement that the owner's requirement to provide a written plan to abate the nuisance is a lawful order, and that failure to provide a written plan and enter into an abatement agreement as described below in § 20-136 could subject the owner to criminal and civil penalties as provided in § 20-137;
- (5) a warning that, if the owner does not respond, as required, or if the nuisance activity is not voluntarily abated to the satisfaction of the code enforcement officer, the City may file a civil action to abate the property as a chronic nuisance property under the provisions in Division 4 of this Article; and
- (6) a statement that the cost of future enforcement at the property as a result of nuisance activities shall be billed to the property owner and could become a lien against the property if not paid as provided in § 20-118.

Sec. 20-136. Agreement to abate chronic nuisance property.

TENTH DRAFT

(10-25-22)

(a) An owner issued a notice of chronic nuisance property pursuant to § 20-135 shall, within ten (10) days of such receipt or date of the posting, whichever is later, contact the code enforcement officer who issued the notice or other contact individual designated in the notice and enter into an abatement agreement with the City to eliminate the conditions, behaviors, or activities which constitute the nuisance activity at the property.

(b) If the owner does not timely respond to the notice under subsection (a) of this Section, or the owner does timely respond but the City and owner are unable to agree to an abatement agreement within thirty (30) days of the date of the notice, the City may proceed to abate the nuisance activities using any of the processes and remedies provided for in this Article or to cite the owner for a misdemeanor violation under § 20-137.

(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 Larimer County District Court to enforce the abatement agreement in accordance with its terms and conditions.

Sec. 20-137. Misdemeanor Violation.

Any property owner who fails to obey any notice of chronic nuisance property issued by the code enforcement officer under § 20-135 to timely abate a chronic nuisance property or to timely enter into an abatement agreement as provided in § 20-136, is guilty of a misdemeanor and subject to the penalties set forth in § 1-15(a) of this Code. Each day's continuation of a violation or failure to comply is a separate offense.

Reserved Section 20-138 through Section 20-139.

Division 5. Civil Abatement Action

Sec. 20-140. Civil action to abate a public nuisance or chronic nuisance property.

If a public nuisance has not been abated within the time period stated in the notice to abate as provided under § 20-113, or if the property owner does not timely respond to the notice of chronic nuisance property as provided in § 20-136, or if the owner does timely respond but the City and owner are unable to agree to a written abatement agreement within thirty (30) days of the date of the notice as provide on § 20-135, the City may abate the public nuisance or chronic nuisance property using the following procedures and other provisions of this Division 5:

(a) The city attorney shall initiate the civil action in municipal court to have the public nuisance or chronic nuisance property declared as such by the court and for an order enjoining the public nuisance or chronic nuisance property and authorizing its restraint, removal, termination, or abatement.

TENTH DRAFT

(10-25-22)

(b) The action shall be commenced by filing a verified complaint, which may be accompanied by a motion for a temporary abatement order. The action shall be conducted under and governed by the Colorado Rules of Civil Procedure as provided in § 19-3(b) except as otherwise provided in this Article. The burden shall be upon the City to prove the existence of the public nuisance or chronic nuisance property by a preponderance of the evidence and the party-defendant(s) shall have the burden to establish any affirmative defense by a preponderance of the evidence. The rules for discovery and disclosure in this civil proceeding shall be those in Rules 316, 326, 331, and 332 of the Colorado Rules of County Court Civil Procedure and not the rules for discovery and disclosure in the Colorado Rules of Civil Procedure. In addition, no party-defendant may file any counterclaim, cross claim, third-party claim, or set-off of any kind in any action under this Division 5.

(c) The party-defendant(s) to an action commenced under this Section and the person(s) liable for the remedies in this Section may include:

- (1) The property itself;
- (2) Any person owning or claiming any legal or equitable interest in the property;
- (3) All lessees and occupants of the property;
- (4) All managers and agents for any person claiming a legal or equitable interest in the property;
- (5) Any person committing, conducting, promoting, facilitating, or aiding in the commission of the public nuisance or chronic nuisance property; and
- (6) Any other person whose involvement may be useful to abate the public nuisance or chronic nuisance property, prevent it from recurring, or to carry into effect the municipal court's orders.

None of these parties shall be deemed necessary or indispensable parties in the action. Any person holding a legal or equitable interest in the property who has not been named as a party-defendant may intervene in the action as a party-defendant. No other person may intervene.

(d) The summons, complaint and, if applicable, the motion for temporary abatement, filed with municipal court under this Section may be served by a code enforcement officer.

(e) The civil action under this Division 5 shall be heard by the municipal court on all factual and legal issues without a jury.

Sec. 20-141. Abatement orders.

(a) *Issuance and effect of temporary and permanent abatement orders.* The issuance of temporary or permanent abatement orders under this Article shall be governed by the provisions of Rule 65 of the Colorado Rules of Civil Procedure, pertaining to temporary restraining orders,

TENTH DRAFT

(10-25-22)

preliminary injunctions and permanent injunctions, except to the extent otherwise provided in this Article, in which event the provisions of this Article shall control. Temporary abatement orders provided for in this Article 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 municipal court. No bond or other security shall be required of the City upon the issuance of any temporary abatement order or permanent abatement order.

(b) *Form and scope of abatement orders.* Every abatement order under this Article 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; shall be narrowly tailored to address the particular kinds of acts or omissions that form the basis of the public nuisance; and shall be binding upon the property, the parties to the action, their attorneys, agents and employees, and 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 and permanent abatement orders entered under this Article may include:

(1) Orders requiring any party-defendant to abate the public nuisance or chronic nuisance property;

(2) Orders authorizing code enforcement officers to take reasonable steps to abate the public nuisance or chronic nuisance property and prevent it from recurring, considering the nature and extent of acts and omissions causing the public nuisance;

(3) Orders requiring certain named individuals to stay away from the property at all or specific times;

(4) Orders reasonably necessary to access, maintain, or safeguard the property; and/or

(5) Orders reasonably necessary to abate the public nuisance or chronic nuisance property and/or preventing them 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 property, or the appointment of a special receiver to protect, possess, maintain, or operate a property.

(d) *Temporary abatement orders.*

(1) The purpose of a temporary abatement order shall be to temporarily abate an alleged public nuisance or chronic nuisance property pending the final determination of a public nuisance or chronic nuisance property. A temporary abatement order may be issued by the municipal 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

TENTH DRAFT

(10-25-22)

occurred in or on the property or the property is a chronic nuisance property and, in the case of a temporary order granted without notice to the property owner, that such order is reasonably necessary to avoid some immediate, irreparable loss, damage, or injury to the public interest or any other person or property.

(3) At any hearing on a motion for a temporary abatement order or a motion to vacate or modify a temporary abatement order, the municipal 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 municipal court may also consider the facts alleged in the verified complaint.

(e) *Permanent abatement orders.*

(1) At the trial on the merits of a civil action commenced under this Division, the City shall have the burden of proving by a preponderance of the evidence that a public nuisance is occurring or existing on the property, or the property is a chronic nuisance property. The Colorado Rules of Evidence shall govern the introduction of evidence at all such trials.

(2) Where the existence of a public nuisance or chronic nuisance property is established in a civil action under this Division after a trial on the merits, the municipal court shall enter a permanent abatement order requiring the party-defendant(s) to abate the public nuisance or chronic nuisance property and take specific steps to prevent the same from occurring or recurring on the property or in using the property.

Sec. 20-142. Motion to vacate or modify temporary abatement orders.

(a) *General.* When a temporary abatement order against a property owner is in effect, such property owner 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. The municipal 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 property or that the property is a public nuisance property. The court may modify the order if it finds by a preponderance of the evidence that such modification will not be detrimental to the public interest and is appropriate, considering the nature and extent of the alleged public nuisance or chronic nuisance property.

(b) *Continuance of hearing.* Except for good cause shown by any party, the Court shall not grant a continuance of any hearing set under this Section unless all the parties so stipulate.

(c) *Consolidation of hearing with other proceedings.* If all parties so stipulate, the municipal court may order the trial on the merits to be advanced and tried with the hearing on these motions.

Section 20-143. Civil Penalty.

(a) The municipal court may impose upon the property owner a civil penalty in the amount of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000.00) per

TENTH DRAFT

(10-25-22)

day, payable to City, for each day the courts finds that a public nuisance continued to exist on the property after the time period for the required abatement as stated in the notice to abate provided under § 20-113 or for each day the court finds the property continued to exist as a chronic nuisance property after the property owner does not timely respond to the notice of chronic nuisance property as provide in § 20-136, or the owner does timely respond but the City and owner are unable to agree to a written abatement agreement within thirty (30) days of the date of the notice as provide on § 20-136.

(b) In establishing the amount of any civil penalty requested, the municipal court 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 or the notice of chronic nuisance property under § 20-135.

Sec. 20-144. Civil judgment.

In any action under this Division in which a public nuisance or chronic nuisance property is established, in addition to the other remedies provided in this Division, the municipal 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 property or for the property to become a chronic nuisance property. This civil judgment shall be for any civil penalties awarded to the City under § 20-143 and to reimburse the City for the City's internal and external costs, as set in the City Manager's approved schedule of fees as provided for in § 20-118(a), the City has incurred and will incur in pursuing the remedies under this Article against the property, which shall include, without limitation, the City's reasonable attorney fees and costs.

Sec. 20-145. Misdemeanor violation and entry order.

(a) The remedies provided in this Division 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

TENTH DRAFT

(10-25-22)

issued by the municipal court under the provisions of this Division, such person shall be guilty of a misdemeanor and, upon conviction, shall be punished by the penalties provided in § 1-15 of this Code.

(b) In any action filed under the provisions of this Division, if any party-defendant fails, neglects, or refuses to comply with an order of the municipal 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 property to abate the public nuisance or chronic nuisance property, take steps to prevent it from occurring again, and perform such other acts required of any party-defendant in the court's orders.

Sec. 20-146. Stipulated alternative remedies.

(a) The City and any party-defendant to an action under this Division may voluntarily stipulate to orders and remedies, temporary or permanent, that differ from those provided in this Division.

(b) The municipal court may accept such stipulations for alternative remedies and may make such stipulations an order of the court, enforceable as an order of the court.

Section 3. That Section 19-3(b) of the City Code is hereby amended to read as follows:

Sec. 19-3. Rules of procedure.

....

(b) The Colorado Rules of Civil Procedure, as amended, shall govern the procedures in Municipal Court in all civil actions for a cause arising under the Charter, Code and City ordinances and as needed for the Municipal Court to determine whether it has jurisdiction over a cause in a civil action, but not for actions for violations, offenses and infractions of the Charter, Code and City ordinances which are to be governed by the procedures established in Subsection (a) of this Section. In addition, the rules for discovery and disclosure in civil abatement actions under Division 5 in Article IX of Code Chapter 20 shall be those in Rules 316, 326, 331, and 332 of the Colorado Rules of County Court Civil Procedure and not the rules for discovery and disclosure in the Colorado Rules of Civil Procedure. References to the district court in the Colorado Rules of Civil Procedure and references to the county court in the Colorado Rules of County Court Civil Procedure shall be deemed to refer to the Municipal Court.

(c) The Municipal Court shall liberally construe, administer and apply these adopted rules of procedure as applicable in each civil action to secure the just, speedy and inexpensive determination of that civil action. In these civil actions, the Municipal Court shall be vested with the full authority to provide civil remedies, including, without limitation, equitable, injunctive and declaratory relief and to award costs and attorney fees to the full extent permitted by law. It shall also have the power in those actions to compel the attendance of witnesses, to punish for contempt of court and to enforce any award of equitable, declaratory or injunctive relief through its contempt power in accordance with

TENTH DRAFT

(10-25-22)

the applicable provisions of the Colorado Rules of Civil Procedure, as amended. This Section is not intended to create any new causes of action in the Municipal Court, nor to provide procedures or relief beyond those contemplated by Rule 106(a)(4) of the Colorado Rules of Civil Procedure to actions undertaken strictly within the sphere of matters that are of the City's local or municipal concern.