

Chapter 1.35

Good Neighbor Ordinance

1.35.010 Purpose; cooperative compliance efforts.

The purpose of this Chapter is to promote the health, safety and welfare of the residents of the City by encouraging good neighbor relations and to promote compliance with this Code. In furtherance of this policy, the City shall provide enforcement mechanisms to prosecute chronic offenders of this Code or otherwise abate chronic offenses as further outlined in this Chapter. (Ord. 6, 2009 §2)

1.35.020 Definitions.

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

Action plan means any agreement entered into by the City and a violator designed to eliminate nuisances from a property or properties.

Administrative Hearing Officer means those individuals appointed by the City Manager and who act pursuant to Chapter 2.09 of this Code who are authorized to hear code infraction and/or chronic offender cases.

Affirmative defense means a situation or condition that is raised by a violator in response to an alleged violation which, if proven to be true, relieves the respondent from responsibility for the violation.

Arm's-length transaction means a transaction between two (2) otherwise unrelated or unaffiliated parties.

Building means a structure which has the capacity to contain and is designed for the shelter of humans, animals or property. *Building* shall include any house, office building, store, warehouse or 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.

Business means any organization or entity that operates on a property, including but not limited to sole proprietorships, corporations, partnerships, limited liability corporations and nonprofit corporations. A business for purposes of this Chapter shall be deemed to be the same entity, regardless of changes in its legal formation, if changes are done in a transaction that has not been done at arm's length.

Chronic offender means an individual or business who or which has been convicted of three (3) nuisance violations of this Code within a twelve-month period, or five (5) nuisance violations of this Code within an eighteen-month period. For purposes of this Chapter, the convictions required must have occurred as the result of nuisance violations that did not occur on the same day. A chronic offender can be a property owner, agent or tenant.

Chronic offense complaint means the document which the City files to begin the process of declaring an individual or business a chronic offender, or declaring a property a chronic offense property.

Chronic offense property means a parcel of real property on which activities have resulted in three (3) nuisance convictions against any individual or business within a twelve-month period, or five (5) nuisance convictions against any individual or business within an eighteen-month period. A chronic offense property is also a parcel of real estate consisting of a complex of multiple individual residences or dwelling units and/or businesses, on which activities have resulted in four (4) nuisance convictions against any individual or business within a twelve-month period or six (6) nuisance convictions against any individual or business within an eighteen-month period for a complex of four (4) or less dwelling units and/or businesses; or five (5) nuisance convictions against any individual or business within a twelve-month period or seven (7) nuisance convictions against any individual or business within an eighteen-month period for a complex of more than four (4) but less than nine (9) dwelling units and/or businesses; or six (6) nuisance convictions against any individual or business within a twelve-month period or eight (8) nuisance convictions against any individual or business within an eighteen-month period for a complex of nine (9) or more dwelling units and/or businesses. For purposes of this Chapter, the required convictions must have occurred as the result of violations that did not occur on the same day.

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 and includes every legal and equitable interest, title, estate, tenancy and right of possession recognized by law or equity, including but not limited to freeholds, life estates, future interests, condominium rights, time-share 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 property interests set forth above.

Municipal Court or *Court* means the Municipal Court of the City as established in the City Charter and Chapter 2.08 of this Code.

Nuisance violation means any nontraffic conviction of the laws of, respectively, the City, County or State, which disturbs the peace of the neighborhood or otherwise harms the health, safety or welfare of the residents of the City, to specifically include any and all convictions pursuant to Titles 6, 7, 9, 10, 13 and 18 of this Code.

Real property or *property* means land and all improvements, buildings and structures, and all estates, rights and interests, legal or equitable, in the same, including but not limited to all forms of ownership and title, future interests, condominium rights, time-share rights, easements, water rights, mineral rights, oil and gas rights, space rights and air rights.

Respondent means the property itself, any person owning or claiming any legal or equitable interest or right of possession in the property, all tenants and occupants at the property, all managers and agents for any person claiming a legal or equitable interest

in the property, any person committing, conducting, promoting, facilitating or aiding the commission of or flight from a code infraction and any other person whose involvement may be necessary to carry into effect the Administrative Hearing Officer's orders.

Unit means each individual dwelling space within a multi-unit dwelling which is capable of legally being occupied as a separate dwelling space. (Ord. 6, 2009 §2)

1.35.030 Chronic offender databases; chronic offense property database.

(a) Chronic offender tenant database.

(1) Maintenance of database. The City shall maintain a database of the name of any tenant who has been found to be a chronic offender pursuant to this Chapter. The database shall be available to the general public.

(2) Removal from database. The City shall remove the names of tenants from the database when the City learns or is notified that the tenant has not been cited or convicted of any nuisance violations within twelve (12) months of the tenant's placement on the chronic offender tenant database.

(b) Chronic offender owner/agent database.

(1) Maintenance of database. The City shall maintain a database of the name of any property owner or agent who has been found to be a chronic offender pursuant to this Chapter. The database shall be available to the general public.

(2) Removal from database. The City shall remove the names of property owners or agents from the database when the City is notified that the property owner has not been cited or convicted of any nuisance violations within twelve (12) months of the property owner's placement on the chronic offender owner database.

(c) Chronic offense property database.

(1) Maintenance of database. The City shall maintain a database of the addresses of all properties or units which have been declared to be a chronic offense property pursuant to this Chapter. The database shall be available to the general public.

(2) Removal from database. The City shall remove the address of a property from the database when the City learns or is notified of one (1) of the following events:

a. That the property has not been the location for a cited nuisance violation within twelve (12) months of the placement of the property address on the chronic offense property database;

b. That the property has been transferred in an arm's-length transaction to an individual who has no relationship to the prior property owner. (Ord. 6, 2009 §2)

1.35.040 Chronic offense property/chronic offender complaint; procedures in general.

(a) Any chronic offender or chronic offense property action commenced shall be in the nature of an administrative proceeding. All issues of fact and law in such actions shall be tried to the Administrative Hearing Officer. No equitable or affirmative defenses may be set up or maintained in any such action except as provided in Section 1.35.100 below. Injunctive remedies under this Chapter may be directed toward the real property or toward a particular person.

(b) An action under this Chapter shall be commenced by the serving of a chronic offense property/chronic offender complaint with the Administrative Hearing Officer, which may be accompanied by a motion for an emergency abatement order. The complaint shall be signed by an agent of the City, which may include, but is not limited to, employees of the Community Development Department or the City Attorney's Office on behalf of the City.

(c) Chronic offense property/chronic offender violations under the provisions of this Chapter shall be strict liability violations. No culpable mental state of any type or degree shall be required to establish a chronic offense property/chronic offender violation under this Chapter or to obtain approval for the remedies provided under this Chapter. Proceedings under this Chapter shall generally be governed by Section 2.09.110 of this Code.

(d) 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 under this Chapter so stipulate.

(e) Actions under this Chapter may be consolidated with another civil action under this Chapter involving the same individual or business, or the same parcel of real property. Actions under this Chapter shall not be consolidated with any other civil or criminal action. No party may file any counterclaim, cross-claim, third-party claim or set-off of any kind in any action under this Chapter.

(f) Chronic offense property/chronic offender violations may include actions affecting the use, possession and enjoyment of real property. Accordingly, the City may file and record with the County Clerk and Recorder a notice of lis pendens against the real property involved to fully inform and protect the interests of any bona fide innocent third party purchaser.

(g) Neither party must, but either party may, be represented by an attorney. Chronic offense property/chronic offender violations may be administratively presented by the City Attorney's Office or by those Code Enforcement personnel authorized to do so by the Director of Community Development. The Director of Community Development shall ensure that any Code Enforcement personnel authorized to administratively present these violations have received appropriate training.

(h) Neither party shall have the right to cross-examination. The Administrative Hearing Officer may, in his or her discretion, allow either party to ask questions of any witnesses, or may himself or herself ask questions of any witnesses.

(i) If the chronic offense property/chronic offender violation is proven by a preponderance of the evidence, the Administrative Hearing Officer shall enter the appropriate findings and shall assess the appropriate sanction and costs as set forth in this Code. Minimum sanctions shall be as set forth in Chapter 1.33 of this Title.

(j) The parties to an action under this Chapter may voluntarily stipulate to any remedy deemed appropriate by the parties. Approval of the Administrative Hearing Officer to all stipulations is required. (Ord. 6, 2009 §2)

1.35.050 Parties to action; intervention.

(a) The parties to a chronic offense property/chronic offender violation action include the City and the respondent(s). No respondent shall be deemed a necessary or indispensable party.

(b) Any person holding any legal or equitable interest or right of possession in the property who has not been named as a respondent may intervene as respondent. No other parties may intervene. (Ord. 6, 2009 §2)

1.35.060 Service of chronic offense property/chronic offender violation complaint.

(a) Personal service upon the respondent is preferred and may be made by City personnel.

(b) In the event that personal service cannot be made at the location of the chronic offense, service of the complaint upon the respondent shall be deemed sufficient if a copy of the same is posted in some prominent place on the real property and sent by first-class mail to the respondent at the last known address given by said person, at the address shown by public records or at the address listed upon any government-issued identification document bearing the photograph of said person presented to or found by any law enforcement officer or code enforcement officer. Service shall be deemed sufficient whether or not the complaint is actually received. Service shall be deemed completed seven (7) calendar days after the letter is mailed.

(c) Service by publication. Respondents and unknown persons who may claim an interest in the property who cannot be served by mail as provided above and cannot be served after a good faith and diligent effort to do so may be served by publishing a copy of the notice of violation twice in a newspaper of general circulation within the City. The notice of violation shall describe the property at issue and the place where a copy of the notice of violation and attendant documents can be obtained. A party served by publication shall have thirty (30) calendar days from the date of the last publication to respond.

(d) 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. (Ord. 6, 2009 §2)

1.35.070 Declaration of chronic offender/chronic offense property; remedies.

(a) Declaration of chronic offense property.

(1) Whenever a chronic offense property complaint is filed by the City, the Administrative Hearing Officer shall order a hearing which shall be held within sixty (60) days of the filing of the complaint. The respondent may file an answer, which answer must be filed not less than ten (10) days prior to the hearing. The respondent's

answer must be filed with the Administrative Hearing Officer and a copy sent to the Community Development Department.

(2) The City shall have the burden of proof as to the record of nuisance convictions. Upon proof by a preponderance of the evidence that a chronic offense property exists, the Administrative Hearing Officer shall declare the property a chronic offense property, and the respondent shall be liable for fines resulting therefrom. The Administrative Hearing Officer may also order such other equitable relief as deemed just and proper, including but not limited to injunctions and/or abatement.

(3) Once a property has been declared a chronic offense property, the City shall require more frequent periodic inspections of the property to check for violations of this Code. The frequency of such inspections and the duration of the increased inspection period shall be determined solely by the City. In making such a determination, the City shall evaluate the nature of the prior offenses, the number of complaints about the property and other factors determined to be relevant by the City.

(4) Once a property has been declared a chronic offense property, the respondent shall not be eligible for courtesy warnings in regard to future alleged nuisance violations.

(5) Once a property has been declared a chronic offense property, the matter may be referred by the City to the District Attorney for consideration of charges pursuant to Section 16-13-301, et seq., C.R.S.

(b) Declaration of chronic offender.

(1) Whenever a chronic offender complaint is filed by the City, the Administrative Hearing Officer shall order a hearing which shall be held within sixty (60) days of the filing of the complaint. The respondent may file an answer, which answer must be filed not less than ten (10) days prior to the hearing. The respondent's answer must be filed with the Administrative Hearing Officer and a copy sent to the Community Development Department.

(2) The City shall have the burden of proof as to the record of nuisance convictions. Upon proof by a preponderance of the evidence that the individual is a chronic offender, the Administrative Hearing Officer shall declare the respondent a chronic offender and the respondent shall be liable for fines resulting therefrom. The Administrative Hearing Officer may also order such other equitable relief as deemed just and proper, including but not limited to injunctions, educational classes and/or abatement.

(3) Once an individual or business has been declared a chronic offender, that individual or business shall not be eligible for a deferred sentence or deferred prosecution in regard to future nuisance violations. (Ord. 6, 2009 §2)

1.35.080 Abatement orders.

(a) The issuance of emergency 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 emergency 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. Emergency 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 Administrative Hearing Officer. No bond or other security shall be required of the City upon the issuance of any emergency abatement order.

(b) 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 any other person named as a party-respondent in the chronic offense action and served with a copy of the order.

(c) Emergency or permanent abatement orders entered under this Chapter shall be narrowly tailored so as to address the particular kinds of separate violations that form the basis of the alleged chronic offense. Such orders may include:

(1) Orders requiring any party-respondent to take steps to abate the chronic offense;

(2) Orders authorizing the nuisance abatement officer or any other Code Enforcement Officer or police officer to take reasonable steps to abate the chronic offense activity and prevent it from recurring, considering the nature and extent of the separate violations;

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

(4) Orders reasonably necessary to access, maintain or safeguard the parcel;

(5) Orders reasonably necessary for the purposes of abating the chronic offense or preventing the chronic offense from occurring or recurring; provided, however, that no such order shall require the seizure of, the forfeiture of title to or the emergency or permanent closure of a parcel, or the appointment of a special receiver to protect, possess, maintain or operate a parcel; and/or

(6) Orders authorizing access to a building, including the interior of the building if demonstrated to be necessary in order to finally abate the nuisance.

(d) Emergency abatement orders.

(1) The purpose of an emergency abatement order shall be to temporarily abate an alleged chronic offense pending the final determination of a chronic offender or chronic offense property. An emergency abatement order may be issued by the Administrative Hearing Officer 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 an emergency abatement order, the City shall have the burden of proving that there are reasonable grounds to believe that a chronic offense occurred in or on the parcel and, in the case of an emergency order granted without notice to the party-respondent, that such order is reasonably necessary to avoid some immediate, irreparable loss, damage or injury. In determining whether there are such reasonable grounds, the Administrative Hearing Officer may consider whether an affirmative defense may exist under Section 1.35.100 below.

(3) At any hearing on a motion for an emergency abatement order or a motion to vacate or modify an emergency abatement order, the Administrative Hearing Officer shall temper the rules of evidence and admit hearsay evidence unless the Administrative Hearing Officer finds that such evidence is not reasonably reliable and trustworthy. The Administrative Hearing Officer may also consider the facts alleged in the verified complaint or in any affidavit submitted in support of the complaint or motion for an emergency abatement order.

(e) Permanent abatement orders. Where the existence of a chronic offense is established in a civil action under this Chapter after a final hearing on the merits, the Administrative Hearing Officer shall enter a permanent abatement order requiring the party-respondent to abate the chronic offense and take specific steps to prevent the same and other chronic offenses from occurring or recurring on the parcel or in using the parcel. (Ord. 6, 2009 §2)

1.35.090 Motion to vacate or modify emergency abatement orders.

(a) At any time an emergency abatement order is in effect, any party-respondent 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 shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing. The Administrative Hearing Officer shall vacate the order if he or she finds by a preponderance of the evidence that there are no reasonable grounds to believe that a chronic offense was committed in or on the parcel or if the Administrative Hearing Officer believes that the conditions required by Paragraph 1.35.080(d)(2) no longer exist. The Administrative Hearing Officer may modify the order if he or she 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 separate violations.

(b) The Administrative Hearing Officer shall not grant a continuance of any hearing set under this Section unless all the parties so stipulate.

(c) If all parties so stipulate, the Administrative Hearing Officer may order the trial on the merits to be advanced and tried with the hearing on these motions. (Ord. 6, 2009 §2)

1.35.100 Affirmative defenses.

If a person named as a party-respondent is the owner of a parcel of real property and is leasing the parcel to one (1) 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 chronic offense were committed by one (1) or more of the tenants or occupants of the parcel, it shall be a defense to an action under this Article 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 chronic offense;

(2) 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 upon receiving written notice or otherwise becoming aware of the citations which led to convictions or liability concerning the tenant's behavior or condition of the property;

(3) Not received notice or otherwise become aware of one (1) of the chronic offense citations or convictions leading to the issuance of a chronic offense complaint under this Chapter (notice under this Paragraph shall mean written or verbal notice of any kind); or

(4) Self-reported a violation pursuant to Section 1.33.035 of this Title; however, such affirmative defense shall only be applicable to the particular violation that was self-reported. (Ord. 6, 2009 §2)

1.35.110 Supplementary remedies for chronic offenses.

In any action filed under the provisions of this Chapter, in the event that any one (1) of the parties fails, neglects or refuses to comply with an order of the Administrative Hearing Officer, the Administrative Hearing Officer may, upon the motion of the City, in addition to or in the alternative to the remedy set forth in Section 1.35.170 of this Chapter 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 chronic offenses from occurring or perform other acts required of the respondent in the Administrative Hearing Officer's orders. (Ord. 6, 2009 §2)

1.35.120 Stipulated alternative remedies.

(a) The City and any party-respondent to an action under this Chapter may voluntarily stipulate to orders and remedies, emergency or permanent, that are different from those provided in this Chapter.

(b) The Administrative Hearing Officer may accept such stipulations for alternative remedies and may order compliance therewith only when the responding parties admit some or all of the allegations set forth in the chronic offense property/chronic offender complaint. (Ord. 6, 2009 §2)

1.35.130 Remedies under other laws unaffected.

Nothing in this Chapter shall be construed as:

(1) Limiting or forbidding the City or any other person from pursuing any other remedies available at law or in equity; or

(2) 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. (Ord. 6, 2009 §2)

1.35.140 Limitation of actions.

Actions under this Chapter shall be filed no later than three hundred sixty-five (365) days after the last in the series of acts constituting the chronic offense occurs. This limitation shall not be construed to limit the introduction of evidence of separate violations that occurred more than three hundred sixty-five (365) days before the filing of the complaint for the purpose of establishing the existence of a chronic offense or when relevant to show a pattern of conduct or for any other purpose. (Ord. 6, 2009 §2)

1.35.150 Effect of property conveyance.

When title to a parcel is conveyed from one (1) person to another, any separate violation existing at the time of the conveyance which could be used under this Chapter to prove that a chronic offense 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 chronic offense under 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 chronic offense under this Chapter if:

(1) The parcel was conveyed for less than fair market value;

(2) The parcel was conveyed to an entity controlled directly or indirectly by the person conveying the parcel; or

(3) The parcel was conveyed to a relative of the person conveying the parcel. (Ord. 6, 2009 §2)

1.35.160 Severability.

In the event that any provision of this Chapter is declared to be unconstitutional or invalid for any reason, the remaining provisions of this Chapter shall be upheld and enforced unless the remaining provisions would create an unreasonable or unjust result. (Ord. 6, 2009 §2)

1.35.170 Failure to comply with orders of Administrative Hearing Officer.

Failure to comply with any order issued by the Administrative Hearing Officer shall constitute a criminal violation of this Code, and violators may be subject to prosecution in front of the Municipal Judge and be penalized pursuant to Chapter 1.32 of this Title. (Ord. 6, 2009 §2)