

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER STARKER
Council Bill No. 01
Ordinance No. 1506
Series of 2012

TITLE: AN ORDINANCE AMENDING SECTIONS 2-83 AND 15-8 OF THE WHEAT RIDGE CODE OF LAWS CONCERNING THE ISSUANCE OF NUISANCE ABATEMENT NOTICES AND OF NOTICES OF CODE VIOLATIONS AND ADMINISTRATIVE CITATIONS IN THE ADMINISTRATIVE ENFORCEMENT PROCESS

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), acting through its City Council (the "Council"), has the authority to enact ordinances proscribing certain acts detrimental to the public health, safety and welfare and to provide for penalties and enforcement of the same; and

WHEREAS, exercising this authority, the Council has previously enacted Chapter 2 of the Wheat Ridge Code of Laws (the "Code") which sets forth an administrative enforcement procedure for certain violations of the Code; and

WHEREAS, in further exercise of this authority, the Council has previously enacted Chapter 15 of the Code, which prohibits certain nuisances and provides an enforcement process for the abatement of such nuisances; and

WHEREAS, based on their experience in enforcing laws pursuant to the administrative process and in pursuing nuisance abatement, City staff recommends certain amendments to the processes set forth in said Chapters 2 and 15; and

WHEREAS, in particular, staff recommends the availability of multiple methods of service to responsible parties to permit officers different approaches based on different circumstances; and

WHEREAS, staff further recommends endorsing an officer's reliance upon the accuracy of the County real estate records to obtain accurate mailing addresses and authorizing a Judge or Administrative Hearing Officer (AHO) to consider actual notice received by responsible parties; and

WHEREAS, such recommended Code amendments are calculated to minimize the risk of dismissal of legitimate citations for which responsible parties have received actual notice; and

WHEREAS, the Council finds and determines that such recommended Code amendments as set forth in this Ordinance further the public health, safety and welfare by increasing the efficiency of the administrative enforcement process and by decreasing the likelihood that Code violators who have been provided due process are not penalized.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Section 2-83 of the Wheat Ridge Code of Laws, concerning the service of a notice of violation of a Code section eligible for administrative enforcement, is hereby amended as follows:

Sec. 2-83. Notice of Violation.

- (a) Upon becoming aware of a violation of an applicable section, a code officer may issue a notice of violation to the responsible party. The notice shall state the date and location of the violation, the approximate time the violation was observed, identifying, where applicable, the property in violation by address or legal description. The notice shall refer to the applicable section violated, describe the violation, and describe the action required to correct the violation. The notice shall require the responsible party to correct the violation within ten (10) days, and shall explain the consequences of failure to correct said violation, including the issuance of an administrative citation.
- (b) Service of a notice of a violation on the responsible party shall be by any of the following means:
 - (1) ~~If the responsible party resides at the site of the violation,~~ ‡The code officer may personally deliver a copy of the notice of violation to A the responsible party at that site; or
 - (2) A copy of the notice may be mailed by first class mail to the last known address of a the responsible party as reflected in the county real estate records; or
 - (3) A copy of the notice of violation may be posted in a conspicuous place AT THE SITE OF THE VIOLATION ~~on the unoccupied premises.~~
- (C) THE CITY'S PROVISION OF NOTICE PURSUANT TO PARAGRAPH (B)(2) OF THIS SECTION TO THE LAST KNOWN ADDRESS OF A RESPONSIBLE PARTY AS REFLECTED IN THE RECORDS OF THE JEFFERSON COUNTY CLERK AND RECORDER'S OFFICE SHALL BE CONSIDERED ADEQUATE NOTWITHSTANDING ANY ERROR IN THE COUNTY'S RECORDS. AN OFFICER MAY REASONABLY RELY UPON CURRENT COUNTY RECORDS TO OBTAIN AN ACCURATE ADDRESS FOR A RESPONSIBLE PARTY.

- (D) AT ANY HEARING CONDUCTED PURSUANT TO SECTION 2-88, THE ADMINISTRATIVE HEARING OFFICER (AHO) MAY CONSIDER EVIDENCE OF ACTUAL NOTICE RECEIVED BY A RESPONSIBLE PARTY IN DETERMINING WHETHER ADEQUATE NOTICE OF A VIOLATION OR OF A CITATION HAS BEEN PROVIDED. THE AHO MAY FIND THAT NOTICE IS ADEQUATE DESPITE A LACK OF TECHNICAL COMPLIANCE WITH SUBSECTION (B) HEREOF UPON EVIDENCE THAT A RESPONSIBLE PARTY RECEIVED ACTUAL NOTICE OF A NOTICE OF VIOLATION AT LEAST TEN (10) DAYS PRIOR TO THE ISSUANCE OF AN ADMINISTRATIVE CITATION FOR THE SPECIFIED VIOLATION(S) OR ACTUAL NOTICE OF AN ADMINISTRATIVE CITATION.

Section 2. Subsection 15-8(b) of the Wheat Ridge Code of Laws, concerning the service of a notice to abate a nuisance, is hereby amended as follows:

(b) *Service of notice.* If written notice to abate is given, it shall be served by:

- (1) Personally delivering a copy of the notice to a ~~the~~ responsible party described in the notice ~~if the responsible party also resides at the property~~; or
- (2) Mailing a copy of the notice by first class or certified mail, return receipt requested, to the last known address of A ~~the~~ responsible party as reflected in the county real estate records; or
- (3) Posting a copy of the notice in a conspicuous place at the SITE OF THE NUISANCE ~~unoccupied premises~~.

Section 3. Section 15-8 of the Wheat Ridge Code of Laws, concerning nuisance abatement, is hereby amended by the addition of two new subsections, (e) and (f), to read in their entirety as follows:

- (E) THE CITY'S PROVISION OF NOTICE PURSUANT TO PARAGRAPH (B)(2) OF THIS SECTION TO THE LAST KNOWN ADDRESS OF A RESPONSIBLE PARTY AS REFLECTED IN THE RECORDS OF THE JEFFERSON COUNTY CLERK AND RECORDER'S OFFICE SHALL BE CONSIDERED ADEQUATE NOTWITHSTANDING ANY ERROR IN THE COUNTY'S RECORDS. AN OFFICER MAY REASONABLY RELY UPON CURRENT COUNTY RECORDS TO OBTAIN AN ACCURATE ADDRESS FOR A RESPONSIBLE PARTY.

- (F) AT ANY HEARING CONDUCTED PURSUANT TO SUBSECTION (C) OF THIS SECTION, THE MUNICIPAL COURT JUDGE MAY CONSIDER EVIDENCE OF ACTUAL NOTICE RECEIVED BY A RESPONSIBLE PARTY IN DETERMINING WHETHER ADEQUATE NOTICE OF A VIOLATION OR OF A CITATION HAS BEEN PROVIDED. THE JUDGE MAY FIND THAT NOTICE IS ADEQUATE DESPITE A LACK OF TECHNICAL COMPLIANCE WITH SUBSECTION (B) HEREOF UPON EVIDENCE THAT A RESPONSIBLE PARTY RECEIVED ACTUAL NOTICE OF A WRITTEN NOTICE TO ABATE A REASONABLE AMOUNT OF TIME PRIOR TO THE EXPIRATION OF THE ABATEMENT PERIOD.

Section 4. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

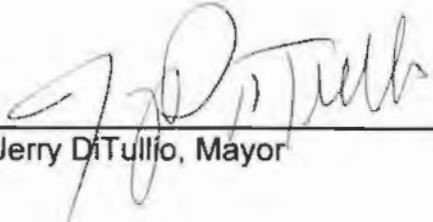
Section 5. Severability; Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 6. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.


INTRODUCED, READ, AND ADOPTED on first reading by a vote of 8 to 0 on this 13th day of February, 2012, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for February 27, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

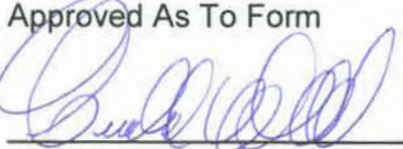
READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 8 to 0, this 27th day of February, 2012.

SIGNED by the Mayor on this 27th day of February, 2012.


Jerry DiTullio, Mayor

ATTEST:


Janelle Shaver, City Clerk

Approved As To Form

Gerald E. Dahl, City Attorney

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