

**CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER STITES
COUNCIL BILL NO. 08
ORDINANCE NO. 1738
Series 2022**

TITLE: AN ORDINANCE ADOPTING A NEW ARTICLE V OF CHAPTER 15 OF THE WHEAT RIDGE CODE OF LAWS CONCERNING CHRONIC NUISANCE PROPERTIES

WHEREAS, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-15-401, the City, acting through its City Council (the "Council"), is authorized to adopt ordinances for the protection of the public health, safety or welfare; and

WHEREAS, the Council finds that some residential and business properties, hereinafter described as "chronic nuisance property" require disproportionate police, fire rescue, and code compliance services and cause an unnecessary burden on those public services and therefore on all taxpayers of the City; and

WHEREAS, chronic nuisance ordinances have been used for decades in many municipalities in the State of Colorado and around the country, but have never been adopted in the City of Wheat Ridge; and

WHEREAS, chronic nuisance properties and businesses present grave health, safety and welfare concerns, and have a tremendous negative impact upon the quality of life, safety, and health of the neighborhoods where they are located as well as the City at large; and

WHEREAS, the Council finds that Section 15-26 (Disorderly Houses) does not offer the City enough enforcement power in the management of properties that receive a disproportionate amount of nuisance complaints in comparison to the rest of the City; and

WHEREAS, the Council, deems it appropriate and in the best interest of the health, safety and welfare of the citizens and residents of the City of Wheat Ridge to adopt a Chronic Nuisance Code to identify and address properties and businesses that are not properly managed and/or maintained and burden adjacent properties and businesses and the City; and

WHEREAS, the Council finds that this ordinance is necessary to identify properties and businesses that create those circumstances, work with the owner or manager to develop a plan to correct such nuisance activities and, if they fail to do so, incentivize them through fines and other enforcement mechanisms to remediate their chronic nuisance in a timely fashion.

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

Section 1. Chapter 15 of the Wheat Ridge Code of Laws is hereby amended by the addition of a new Article V, to read in its entirety as follows:

Article V - Chronic Nuisance Properties

15-50 Purpose.

Chronic nuisance properties present grave health, safety and welfare concerns, which the property owners or persons in charge of such properties have failed to take corrective action to abate the nuisance condition. Chronic nuisance properties have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located. This article is enacted to remedy nuisance activities that repeatedly occur or exist at chronic nuisance properties by providing a process for abatement; and this remedy is not an exclusive remedy available under any state or local laws and may be used in conjunction with such other laws.

The city council finds that it is a reasonable exercise of its police powers to require property owners and others exercising control over property to take reasonable steps to discourage and abate nuisance activities on their properties, and to penalize those who do not adequately discourage such activities. The city council further finds that increased cooperation between property owners and the city is integral in reducing such nuisance activity. Chronic nuisance properties are a financial burden to the city and this article is a means to ameliorate those conditions and hold responsible the owners or persons in charge of such property.

15-51 Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abate shall carry the meaning defined in section 15-4 of this Code.

Abatement agreement means a contract between the city and owner, person in charge of the chronic nuisance property, or both, in which such person(s) agrees to promptly take all lawful and reasonable actions; which shall be set forth in the agreement, to abate the nuisance within a specified time and according to specified conditions.

Administrative Hearing Officer means those individuals who act pursuant to section 2-87 of this Code who are authorized to hear code infraction and/or chronic offender cases.

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.

Chief of Police includes any person designated by the police chief as his or her delegate in the enforcement of this article.

Chronic offender means an individual or business who or which has committed three (3) or more nuisance violations within a 12-month period. For purposes of this article, the nuisance violations required must have occurred as the result of acts that did not occur on the same day. A chronic offender can be a property owner, person in charge, agent, and/or tenant.

Chronic nuisance 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 nuisance property.

Chronic nuisance property means a parcel of real property on which activities have resulted in 3 nuisance violations against any individual or business within a 12-month period. A chronic nuisance 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 violations against any individual or business within a 12-month period for a complex of four (4) or less dwelling units and/or businesses; or five (5) nuisance violations against any individual or business within a 12-month period for a complex of more than four (4) but less than nine (9) dwelling units and/or businesses; or six (6) nuisance violations against any individual or business within a 12-month period for a complex of nine (9) or more dwelling units and/or businesses. A group home cannot be designated as a chronic nuisance property. For purposes of this Chapter, the required nuisance violations or citations must have occurred as the result of violations or citations that did not occur on the same day.

Control means the power or ability to direct or determine conditions, behaviors, or activities occurring on a property.

Group home means a home that is classified as a group home under section 26-123 of this Code.

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.

Nuisance violation means any nuisance citation issued by the Wheat Ridge Police Department or 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 Chapters 4, 8, 15, 16, 21, 24, 26 of this Code.

Person(s) in charge means the owner and, if different than the owner, any other person in actual or constructive possession of a property, including, but not limited to, a lessee, tenant, occupant, agent, or manager of a property under his or her control.

Premises and property may be used by this chapter interchangeably and means any building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof including property used as residential or commercial property.

Unit means each individual dwelling space within a multi-unit dwelling which is capable of legally being occupied as a separate dwelling space.

15-52 Violation.

- (a) Any property within the city of Wheat Ridge which is a chronic nuisance property is in violation of this article and subject to its remedies.
- (b) Persons in charge who permit their property to be a chronic nuisance property shall be in violation of this article and subject to its remedies.
- (c) Whenever the Chief of Police issues a violation citation to more than one person because of a violation of this chapter, those persons shall be jointly and severally liable.

15-53 Enforcement procedure in general.

- (a) When the Chief of Police receives police documentation confirming the occurrence of a potential chronic offender of chronic nuisance property, the Chief of Police may review such reports to determine whether they describe the nuisance activities enumerated in Chapter 15 of this Code.
- (b) Upon such a finding, the Chief of Police, shall notify a property owner at the address shown on the county assessor records and shall notify the person in charge of the property, if such person is not the property owner, in writing that the property is being declared a chronic nuisance property and serviced with a chronic nuisance complaint.
- (c) The chronic nuisance complaint shall comply with the service and notice requirements of section 2-83 of this Code.
- (d) If the person in charge fails to respond to the notice within the time prescribed, the Chief of Police shall post such notice at the property and issue the person in charge a chronic nuisance complaint. If the person in charge responds as required by the notice and agrees to abate the nuisance activity, the Chief of Police and the person in charge and/or property owner may work out an agreed-upon course of action which would abate the nuisance activity. If an agreed-upon course of action does not result in the abatement of the nuisance activities or if no agreement concerning abatement is reached, the matter shall be forwarded to the office of the city attorney for enforcement action.
- (e) It is a defense to an action for chronic nuisance property that the owner at all material times could not, in the exercise of reasonable care or diligence, determine that the property had become chronic nuisance property, or could not in spite of the exercise of reasonable care and diligence control the conduct leading to the determination that the property is chronic nuisance property.

15-54 Declaration of chronic nuisance property/chronic offender; remedies.

- (a) At hearing, the Administrative Hearing Officer shall declare a property a chronic nuisance property if:
 - (1) The city establishes the number and time period of public nuisance violations required by this article; or

- (2) The person or business owning or occupying the parcel or unit fails to appear at a hearing, notice of which was served pursuant to section 15-53 of this article; or
 - (3) The person or business stipulates, in accordance with section 15-55 this article, to the declaration; and
 - (4) The administrative hearing officer shall order:
 - i. Payment of fees and costs as set forth in section 2-92 of this Code; and
 - ii. The city shall conduct periodic inspections of the address 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; unless the city and the chronic offender stipulate to orders and remedies, emergency or permanent, that are different from those provided in this chapter.
- (b) The administrative hearing officer shall declare a property owner and person in charge, if different from the property owner, a chronic violator if:
- (1) At hearing, the city establishes the number and time period of public nuisance violations required by this article; or
 - (2) The person in charge fails to appear at a hearing, notice of which was served pursuant to section 15-53 of this article; or
 - (3) The property owner or person in charge stipulates, in accordance with section 15-55 of this article, to the declaration; and
 - (4) The administrative hearing officer shall order:
 - i. Payment of fees and costs as set forth in section 2-92 this Code, unless the city and the property owner or person in charge stipulates to orders and remedies, emergency or permanent, that are different from those provided in this chapter or chapter 2 of this Code.

Nothing in this article shall be construed as limiting the city from pursuing any other remedies available at law or in equity, including referral to the county district attorney for consideration of charges pursuant to C.R.S. § 16-13-301 et seq.

15-55 Administrative procedure in general.

- (a) Any chronic offender or chronic nuisance 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 15-56 below. Injunctive remedies under this article may be directed toward the real property or toward a particular person.
- (b) An action under this article shall be commenced by the serving of a chronic nuisance 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, the Chief of Police, employees of the Community Development Department, or the City Attorney's Office on behalf of the city.
- (c) Chronic nuisance property/chronic offender violations under the provisions of this article 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 article or to obtain approval for the remedies provided under this article. Proceedings under this article shall generally be governed by Art. V, Chapter 2 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 article 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 article so stipulate.
- (e) Actions under this article 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 article 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 article.
- (f) Chronic nuisance 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 nuisance property/chronic offender violations may be administratively presented by the City Attorney's Office or by those personnel authorized to do so by the Director of Community Development and/or the Police Department. The Director of Community Development and/or Police Department shall ensure that any Code Enforcement personnel authorized to administratively present these violations have received appropriate training.
- (h) If the chronic nuisance 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 section 15-54 of this article.
- (i) The parties to an action under this article may voluntarily stipulate to any remedy deemed appropriate by the parties. Approval of the Administrative Hearing Officer to all stipulations is required.

15-56 Affirmative Defenses.

- (a) If the subject parcel of real property or unit within a complex is leased and the public nuisance violations were committed by tenants or occupants of the parcel or unit, it shall be a defense to an action described in this article, that the property owner or agent of the subject parcel or unit has:
 - (1) Evicted, or attempted to evict by commencing and pursuing with due diligence appropriate court proceedings, all of the tenants or occupants who committed the public nuisance violations; or
 - (2) Considering the nature and extent of the public nuisance violations, undertaken and pursued with due diligence reasonable means to avoid a recurrence of similar violations on the subject parcel or unit.

15-57 Limitation on Actions.

Actions under this chapter shall be filed no later than 365 days after the last in the series of public nuisance violations occurs. However, this limitation shall not be construed to prevent the introduction of evidence of any public nuisance violations regardless of the date of occurrence at a hearing for the purpose of showing a pattern of conduct or for any other purpose.

15-58 Effect of property conveyance.

(a) When title to a parcel of real property or a unit within a complex is conveyed, any nuisance violation existing at the time of the conveyance that could be used under this article to prove that the parcel or unit is a chronic nuisance property shall not be so used unless a reason for the conveyance was to avoid such declaration. Further, if a parcel or unit had been declared a chronic nuisance property prior to the time of the conveyance, it shall be disqualified as a chronic nuisance property unless a reason for the conveyance was to lose designation as a chronic nuisance property. It shall be a rebuttable presumption that a reason for the conveyance was to avoid such declaration if:

- (1) The parcel or unit was conveyed for less than fair market value;
- (2) The parcel or unit was conveyed to an entity controlled directly or indirectly by the person or entity conveying the parcel or unit; or
- (3) The parcel or unit was conveyed to a relative of the person conveying the parcel or unit.


Section 2. 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 3. 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 7 to 0 on this 9th day of May 2022, 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 May 23, 2022 at 7:00 p.m., as a virtual meeting and in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado if allowed to meet in person on that date per COVID-19 restrictions.


READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 7 to 0, this 23 day of May, 2022.

SIGNED by the Mayor on this 31 day of May, 2022.



Bud Starker, Mayor

ATTEST:



Stephen Kirkpatrick, City Clerk

Approved as to Form



Gerald E. Dahl, City Attorney

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