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submitted 6/24/02

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by

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mark G.

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ENACTING A NEW CHAPTER 10-2.5, B.R.C. 1981,  
CONCERNING NUISANCE ABATEMENT, AND SETTING FORTH DETAILS IN  
RELATION THERETO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,  
COLORADO:

Section 1. Title 10, B.R.C. 1981, is amended by the addition of a new Chapter 2.5, to  
read:

TITLE 10 STRUCTURES

**Chapter 2.5 Abatement of Public Nuisances<sup>1</sup>**

<sup>1</sup>Adopted by Ordinance No. \_\_\_\_\_.

**10-2.5-1 Legislative Findings and Statement of Purpose.**

The city council of the City of Boulder, Colorado, hereby makes the following legislative  
findings and determinations of fact:

- (a) The Boulder Revised Code presently contains various provisions enacted under the  
police power of the city which are intended to maintain order and promote the health,  
safety and welfare of the residents of the city.
- (b) Existing code provisions are directed towards the conduct of persons on private  
property, and are intended to ensure that neither the conduct of such persons, nor the  
physical condition of such properties, constitutes a nuisance to other residents in the  
vicinity of the properties or passers-by on the public rights-of-way.
- (c) Various code provisions, including those pertaining to unreasonable noise, trash,  
litter, assault, brawling and harassment, are enforced by the filing of criminal  
prosecutions against the persons immediately responsible for violations of the same.
- (d) Notwithstanding these enforcement efforts, recurring code violations on parcels of  
property in the city can result in the creation of public nuisances on such properties which  
seriously threaten the peace and safety of neighboring residents and undermine the  
quality of life of the residents of the city.
- (e) Public nuisance laws exist under the state statutes, but such laws are enforceable only  
in the state courts and not in the municipal court.
- (f) Section 31-15-401(1)(c), C.R.S., authorizes the city to declare and abate public  
nuisances.

(g) Section 16-13-302(1), C.R.S., specifically provides that the state public nuisance laws shall not be construed to limit or preempt the powers of any court or political subdivision to abate or control nuisances.

(h) It is necessary and desirable in the public interest to enact a local public nuisance law in order to: eliminate local public nuisances by removing parcels of real property in the city from a condition that consistently and repeatedly violates municipal law; make property owners vigilant in preventing public nuisances on or in their property; make property owners responsible for the use of their property by tenants, guests and occupants; provide locally enforceable remedies for violations of local ordinances; and otherwise deter public nuisances.

(i) The purpose of this chapter is to enact such a local public nuisance law.

(j) Premises governed by the Colorado Beer Code and Colorado Liquor Code need not be regulated by the provisions of this ordinance, because regulations promulgated under Chapters 46, 47 and 48 of Title 12 of the Colorado Revised Statutes establish adequate local remedies to address recurring disturbances or other activities occurring on such premises which are offensive to the residents of the neighborhood in which such licensed establishments are located.

#### **10-2.5-2 Definitions.**

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

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

"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 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 foregoing.

"Notice of violation" means a written notice advising the owner and tenant or occupant of a parcel that the parcel, such persons, and other affected persons may be subject to proceedings under this chapter if the remaining number of separate violations needed to declare the parcel a public nuisance under this chapter occur in or on the parcel within the required period of time. Such written notice shall be deemed sufficient if sent by certified mail to the parcel, addressed to the owner by name and to all tenants and occupants and to the owner by name at any different address of the owner as shown in the records of the Boulder County Assessor or of the Boulder County Clerk and Recorder. Each notice of violation shall be limited to one separate violation.

"Ownership interest" means a fee interest in title to real property.

"Parcel" means any lot or other unit of real property, including, without limitation, individual apartment units, or any combination of contiguous lots or units owned by the same person or persons or entity or entities.

"Public nuisance" means the condition or use of any parcel on or in which three or more separate violations have occurred within a twelve-month period or five or more separate violations have occurred within a twenty-four-month period, if, during each such violation, the conduct of the person committing the violation was such as to annoy or disturb the peace of the residents in the vicinity of the parcel or of the passers-by on the public streets, sidewalks, and rights-of-way in the vicinity of the parcel; provided, however, that: (1) within thirty days of each such separate violation, except the final separate violation needed to prove a public nuisance under this chapter, the city has sent by first class mail to the owner and tenant or occupant of the parcel, a notice of violation; and (2) the last separate violation needed to prove a public nuisance under this chapter occurred no less than forty-five days after the date of mailing of the last notice of violation.

"Relative" means an individual related by consanguinity within the second degree as defined in Section 1-2-1, "Definitions," B.R.C. 1981.

"Separate violation" means any act or omission that constitutes a violation of the Boulder Revised Code, provided that: an ongoing and uninterrupted violation shall be deemed to have been committed only on the last day during which all the necessary elements of the violation existed; and multiple violations committed within any twenty-four-hour period of time on or in the same parcel shall be considered a single separate violation, irrespective of whether the violations are otherwise related to each other by some underlying unity of purpose or scheme.

#### **10-2.5-3 Nature of Remedies.**

The remedies provided in this chapter 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 issued by the municipal court under the provisions of this chapter, such person shall be guilty of a misdemeanor.

#### **10-2.5-4 General Provisions.**

(a) No person having an ownership or leasehold interest in any parcel, or having a contractual obligation to manage such parcel, or occupying such parcel, shall commit, conduct, promote, facilitate, permit, fail to prevent or otherwise let happen, any public nuisance in or on such parcel. Such persons shall abate any public nuisance upon the parcel and prevent any public nuisance from occurring on the parcel.

(b) The city manager may, without a court order, take reasonable steps to abate public nuisance and prevent it from recurring as long as the same may be accomplished without entering any enclosed building upon the parcel, except that police officers may enter enclosed buildings if otherwise permitted by law.

#### **10-2.5-5 Procedures in General.**

(a) The municipal court is vested with the jurisdiction, duties and powers to hear and decide all causes arising under this chapter, and to provide the remedies specified herein.

(b) Any civil action commenced pursuant to the provisions of this chapter shall be in the nature of a special statutory proceeding. All issues of fact and law in such civil actions shall be tried to the court without a jury. No equitable defenses may be set up or maintained in any such action except as provided specifically in this chapter. Injunctive remedies under this chapter may be directed toward the parcel or toward a particular person.

(c) Public nuisances as defined by this chapter shall be strict liability violations. No culpable mental state shall be required to establish a public nuisance under this chapter or to obtain court approval for remedies provided by this chapter. However, if a separate violation is used by the city to establish the existence of a public nuisance that has not been previously adjudicated, all of the elements of such separate violation, including any culpable mental state required for the commission of such separate violation, must be established by the city by a preponderance of the evidence at the trial on the merits of any civil action commenced pursuant to the provisions of this chapter.

(d) Proceedings pursuant to the provisions of this chapter shall generally be governed by the Colorado Rules of County Court Civil Procedure unless this chapter provides a more specific rule, provided, however, that with respect to the rules related to injunctions, Rule 65 of the Colorado Rules of Civil Procedure shall control rather than Rule 365 of the Colorado Rules of County Court Civil Procedure. Where this chapter, the Colorado Rules of Civil Procedure, or the Colorado Rules of County Court Civil Procedure fail to state a rule of decision, the court shall first look to the Public Nuisance Abatement Act, Section 16-13-301, *et seq.*, C.R.S., and the cases decided thereunder.

(e) Actions pursuant to the provisions of this chapter shall be filed by the office of the city attorney for the city.

(f) 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 initiated pursuant to this chapter agree otherwise.

(g) An action brought pursuant to the provisions of this chapter may be consolidated with another civil action brought pursuant to the provisions of this chapter that involves the same parcel of real property. However, such actions shall not be consolidated with any other civil or criminal action except upon the stipulation of all parties. No party may file any counterclaim, cross-claim, third-party claim or set-off of any kind in any action pursuant to the provisions of this chapter.

#### **10-2.5-6 Commencement of Public Nuisance Actions; Prior Notification.**

(a) Notification is required before filing civil actions pursuant to the provisions of this chapter as follows:

(1) At least ten calendar days before filing a civil action pursuant to the provisions of this chapter, a notice shall be posted at some prominent place on the parcel. A notice shall also be mailed to the owner of the parcel. The mailing of the notice shall be deemed sufficient if mailed by certified mail to the owner at the address shown of record relating to the parcel for such owner in the records of the Boulder County Assessor. The posted and mailed notices shall state that the parcel has been identified as the location of an alleged public nuisance and that a civil action pursuant to the provisions of this chapter may be filed.

(2) 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.

(3) The city shall not be required to post or mail any notice specified herein if it determines that any of the following conditions exist:

(A) The public nuisance poses an immediate threat to public safety;

(B) Notice would jeopardize a pending investigation of criminal or public nuisance activity, confidential informants, or other police activity; or

(C) Any other emergency circumstance exists.

(b) An action pursuant to the provisions of this chapter shall be commenced by the filing of a verified complaint or a complaint verified by an affidavit, which may be accompanied by a motion for a temporary abatement order, through the office of the city attorney. No such action shall be commenced unless each of the separate violations asserted in support of such action has resulted in the issuance of a summons, complaint, or summons and complaint charging at least one person responsible for such separate violation with the commission of the same.

(1) The parties-defendant to an action commenced under the provisions of this chapter and the persons liable for the remedies provided by this chapter may include the parcel of real property itself, any person owning or claiming any ownership or leasehold interest in the parcel, all tenants and occupants of the parcel, all managers and agents for any person claiming an ownership or leasehold interest in the parcel, any person committing, conducting, promoting, facilitating or aiding in the commission of a public nuisance, and any other person whose involvement may be necessary to abate the nuisance, prevent it from recurring, or to carry into effect the court's orders. None of these parties shall be deemed necessary or indispensable parties. Any person holding any legal or equitable interest in the parcel who has not been named as a party-defendant may intervene as a party-defendant. No other person may intervene.

(2) The parties-defendant shall be served as provided in the Colorado Rules of Civil Procedure for other civil actions except as otherwise provided in this chapter.

(3) The summons, complaint and, if applicable, temporary abatement order shall be served upon the real property itself by posting copies of the same in some prominent place on the parcel.

(4) Any city code enforcement officer or police officer or other designee of the city manager may serve the summons, complaint and, if applicable, the motion for temporary abatement.

#### **10-2.5-7 Effect of Abatement Efforts; Defense to Action.**

(a) If a person named as a party-defendant is the owner of a parcel of real property and is leasing the parcel to one 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 public nuisance were committed by one or more of the tenants or occupants of the parcel, it shall be a defense to an action pursuant to the provisions of this chapter 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 public nuisance; and  
(2) Has, 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.

(b) If, in the judgment of the city manager, a person who has received a notice of violation has established sufficient grounds to assert a defense to an action under subsection (a) above, the separate violation which was the subject of the notice of violation shall no longer be considered a separate violation within the meaning of this chapter. Nothing herein shall be construed to prohibit the introduction of evidence of said separate violation at a subsequent court proceeding, if a public nuisance action is commenced on the basis of additional separate violations, for the purpose of determining whether the defendants named in such action have undertaken and pursued with due diligence reasonable means to avoid a recurrence of similar violations on the parcel of real property by the present and future tenants or occupants of the parcel.

(c) Except as provided in subsection (a) above, the fact that a defendant took steps to abate the public nuisance after receiving the notice of its existence does not constitute a defense to an action brought pursuant to the provisions of this chapter.

#### **10-2.5-8 Abatement Orders.**

(a) Issuance and Effect of Temporary and Permanent Abatement Orders: The issuance of temporary 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 temporary 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. Temporary 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 court. No bond or other security shall be required of the city upon the issuance of any temporary abatement order.

(b) Form and Scope of Abatement Orders: 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-defendant in the public nuisance action and served with a copy of the order.

(c) Substance of Abatement Orders: Temporary or permanent abatement orders entered pursuant to the provisions of this chapter shall be narrowly tailored to address the particular kinds of separate violations that form the basis of the alleged public nuisance. Such orders may include orders:

- (1) Requiring any parties-defendant to take steps to abate the public nuisance;
- (2) Authorizing the city manager to take reasonable steps to abate the public nuisance activity and prevent it from recurring, considering the nature and extent of the separate violations;
- (3) Requiring certain named individuals to stay away from the parcel at all times or for some specific period of time;
- (4) Issuing any order that is reasonably necessary to access, maintain or safeguard the parcel; and

(5) Issuing any order that is reasonably necessary for the purposes of abating the public nuisance or preventing the public nuisance 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 parcel, or the appointment of a special receiver to protect, possess, maintain or operate a parcel.

(d) Temporary Abatement Orders:

(1) The purpose of a temporary abatement order shall be to abate temporarily an alleged public nuisance pending the final determination of a public nuisance. A temporary abatement order may be issued by the 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 occurred in or on the parcel and, in the case of a temporary order granted without notice to the party-defendants, that such order is reasonably necessary to avoid some immediate, irreparable loss, damage or injury. In determining whether there are such reasonable grounds, the court may consider whether an affirmative defense may exist under any of the provisions of this chapter.

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

(e) Permanent Abatement Orders:

(1) At the trial on the merits of a civil action commenced under this chapter, the city shall have the burden of proving by a preponderance of the evidence that a public nuisance occurred on or in the parcel identified in the complaint. At such trial, the city must also prove, by a preponderance of the evidence, any separate violations asserted as grounds for

the public nuisance action that have not been previously adjudicated. The Colorado Rules of Evidence shall govern the introduction of evidence at all such trials.

(2) Where the existence of a public nuisance is established in a civil action pursuant to the provisions of this chapter after a trial on the merits, the court shall enter a permanent abatement order requiring the parties-defendant to abate the public nuisance and take specific steps to prevent the same and other public nuisances from occurring or recurring on the parcel or in using the parcel.

#### **10-2.5-9 Motion to Vacate or Modify Temporary Abatement Orders.**

(a) Timing of Motion to Vacate Temporary Order: At any time a temporary abatement order is in effect, any party-defendant 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 (a) shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing.

(b) Standard of Proof for Vacation of Temporary Order: The 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 parcel. 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 separate violations.

(c) Continuance of Hearing: The court shall not grant a continuance of any hearing set under this section unless all the parties so stipulate.

(d) Consolidation of Hearing with Other Proceedings: If all parties consent, the court may order the trial on the merits to be advanced and tried with the hearing on these motions.

#### **10-2.5-10 Civil Judgment.**

In any case in which a public nuisance is established, in addition to a permanent abatement order, the 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 parcel that is the subject of the public nuisance action. This civil judgment shall be for the purpose of compensating the city for the costs it incurs in pursuing the remedies pursuant to the provisions of this chapter, and shall not be punitive in nature.

#### **10-2.5-11 Supplementary Remedies for Public Nuisances.**

In any action filed under the provisions of this chapter, in the event that any one of the parties fails, neglects or refuses to comply with an order of the 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 parcel of real property and abate the nuisance, take steps to prevent public nuisances from occurring, or perform other acts required of the defendants in the court's orders.

#### **10-2.5-12 Stipulated Alternative Remedies.**



(a) The city and any party-defendant to an action pursuant to the provisions of this chapter may voluntarily stipulate to orders and remedies, temporary or permanent, that are different from those provided in this chapter.

(b) The court shall make such stipulations for alternative remedies an order of the court and they shall be enforceable as an order of the court.

**10-2.5-13 Remedies Under Other Laws Unaffected.**

Nothing in this chapter shall be construed as limiting or forbidding the city or any other person from pursuing any other remedies available at law or in equity, or 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.

**10-2.5-14 Limitation of Actions.**

Actions pursuant to the provisions of this chapter shall be filed no later than one year after the public nuisance or the last in a series of acts constituting the public nuisance occurs. This limitation shall not be construed to limit the introduction of evidence of separate violations that occurred more than one year before the filing of the complaint for the purpose of establishing the existence of a public nuisance or when relevant for any other purpose.

**10-2.5-15 Effect of Property Conveyance.**

When title to a parcel is conveyed from one person to another, any separate violation existing at the time of the conveyance which could be used under this chapter to prove that a public nuisance 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 public nuisance pursuant to the provisions of 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 public nuisance pursuant to the provisions of this chapter if: (1) the parcel was conveyed for less than fair market value; (2) the parcel was conveyed to an entity or entities 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.

Section 2. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 3. The council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY TITLE ONLY this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.



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**CITY OF BOULDER**

**CITY COUNCIL AGENDA ITEM**

**MEETING DATE:** August 21, 2001

(Agenda Item Preparation Date: August 14, 2001)

**AGENDA TITLE:**

Introduction, first reading, and consideration of a motion to order published by title only three ordinances:

- a. An ordinance enacting a new Chapter 10-2.5, B.R.C. 1981, concerning nuisance abatement;
- b. An ordinance amending Section 10-3-16, B.R.C. 1981, concerning administrative remedies with reference to rental housing licenses; and
- c. An ordinance adopting a new Section 10-3-18, B.R.C. 1981, concerning requirement for written disclosures as a condition of a rental license.

**REQUESTING DEPARTMENT:**

Office of the City Attorney

Joseph N. de Raismes, III, City Attorney

Jerry P. Gordon, Deputy City Attorney

Maureen T. Amundson, Legal Assistant

Maureen Rait, Co-Director Public Works for Development and Support Services

**FISCAL IMPACT:** None of the three proposed ordinances should have immediate significant fiscal impact. If many civil nuisance abatement actions or administrative actions affecting rental licenses were brought, existing resources might be strained. However, this is not anticipated in the immediate future.

**BACKGROUND:**

In November of 2000, the University Hill Action Group ("UHAG") issued its report, *Reviving University Hill* to Council. That report, based on the UHAG meetings, research and discussions, recommended more than thirty projects -- and five broader policies -- for reviving the University Hill neighborhood. Among its recommendations, UHAG developed seven suggestions for new or revised code provisions.

Of the original proposals for ordinance changes that came out of the UHAG process, several have now been reviewed by Council. New trash, graffiti and nuisance party provisions have been enacted by the Council. Consideration of a proposal to regulate the use of indoor furniture placed in outdoor locations was delayed pending additional discussions between student representatives and community members. In addition, some related proposals relating to noise enforcement provisions of the Code, while not specifically endorsed by the UHAG process, appeared on the Council agenda for first reading on August 7, 2001.

Attached to this memorandum are the last three ordinances suggested by UHAG. They include proposals that would:

- Enact a new civil nuisance abatement ordinance;
- Revise rental license revocation procedures so as to allow utilization of that process upon the occurrence of repeated nuisance-type violations; and
- Enact a new requirement that certain disclosures be made to all tenants in writing by landlords.

## **ANALYSIS:**

### **1. Establishing A Civil Nuisance Abatement Procedure**

In its final report, the University Hill Action Group recommended that the City adopt a civil nuisance abatement procedure. It was the opinion of UHAG that having such a procedural option might provide the City with a needed tool for the enforcement of noise, trash, occupancy and other related violations. The proposed ordinance being considered here, if adopted, would establish such a procedure.

A number of municipalities have ordinances defining civil nuisance abatement procedures. Staff has researched these ordinances, or consulted with representatives, from the following municipalities with regard to such approaches:

Denver, CO

Fort Collins, CO

Westminster, CO

San Luis Obispo, CA

Los Angeles, CA

Ames, IA

East Lansing, MI

Stillwater, OK

The basic message from these various jurisdictions is that nuisance abatement actions are not commonly utilized — especially in circumstances such as those causing problems on University Hill. In big cities, like Los Angeles and Denver, the focus of nuisance abatement is on crack houses and other locations where serious crime exists. And even in such cases, the existence of nuisance abatement ordinances have been used to get the attention of owners of problem properties, but compliance has generally been obtained through other means.

Although actual nuisance abatement actions (in the context of the problems which we are dealing) is relatively rare around the country, the adoption of a nuisance abatement ordinance may provide a useful (if limited) tool. This was the view in Fort Collins, when, in April of 2000, it adopted a "public nuisance ordinance" which had the stated objective of assisting remediation of chronic problem properties and holding property owners accountable. Fort Collins, struggling with problems not dissimilar to those that have plagued University Hill, adopted its nuisance abatement ordinance over some substantial public opposition.

In Boulder, there have been some occasions when enforcement staff, upon contacting landlords or residents about problems, have had difficulty initiating meaningful discussions or have been told that the issue is a "police problem" and therefore not the responsibility of the party with whom our enforcement people are attempting to communicate. The existence of nuisance abatement procedures might help make such discussions more productive. However, even if enacted, it is doubtful that nuisance abatement actions would be brought very often. This is a tool that would be most helpful in specific circumstances.

As drafted, the ordinance would establish a civil action to be litigated in Municipal Court. It could be invoked only after a number of separate incidents had occurred through which no separate proof required the peace of residents, passers-by or members of the neighborhood had been disturbed. Three such disturbances within a twelve-month period, or five separate violations within a twenty-four-month period, would be required as a predicate for filing any nuisance abatement action. Notice of each violation would have to be provided at the time of the disturbance, and detailed provisions are made within the ordinance for due process in the event that a nuisance abatement action were to be brought.

The outcome of a successful nuisance abatement action would be an "abatement order." Such an order could be enforced through the exercise of the Court's contempt powers or through criminal prosecution. It might be issued to tenants, people with no formal connection to a property but who just "hang out" and cause disturbances, or to fraternities, sororities, landlords, property management firms, or any other parties who, through action or inaction, are contributing to a disturbance of the peace and quiet of a neighborhood.

An advantage of a civil nuisance abatement procedure would be that the Municipal Court could fashion an appropriate remedy to deal with whatever specific problem was occurring at a given property. A great variety of corrective orders might be issued depending upon specific needs and circumstances. Examples might include:

- An order to specific people who were not officially tenants to stay away from particular premises;
- An order to a management company to screen trash or provide adequate trash receptacles;
- An order to specific problem tenants to avoid having parties that extended later than a specified time at night; and,
- An order to the occupants of a particular rental unit that would preclude the use of alcohol at parties or social events where there had been evidence that alcoholic beverages had been provided to underage drinkers or that the use of alcoholic beverages has been associated with noise and disorder disrupting the community.

Specifically excluded from the proposed ordinance are any provisions that could deprive property owners of their ownership interests or place those properties into receivership. Such provisions do exist, and have occasionally been utilized, in big city contexts when nuisance abatement procedures have been used to deal with crack houses, gang headquarters, and other locations associated with serious crime. However, such provisions were excluded from the Fort Collins ordinance because the problems with which Fort Collins was attempting to deal were not of this sort. The same is true for Boulder. It is neighborhood distress and disturbance, rather than serious drug or gang crime, that is of greatest concern to this community. Given the kinds of problems with which Boulder is now concerned, there seems no reason to enact provisions so threatening to local property owners. On the other hand, it is thought that the ability to tailor specific abatement orders would not threaten ownership interests but might facilitate the solution of problems.

## **2. Revision of Rental License Revocation Procedures to Allow Application to Repeated Nuisance Occurrences at a Particular Property**

Currently, an administrative remedy against a rental license is provided in Section 10-3-16, B.R.C. 1981. The provision allows the City Manager to seek an administrative remedy for violations of the chapter relating to rental licenses or for violations of the chapter relating to housing code matters. For such violations, the City Manager may impose civil penalties, issue corrective orders, or revoke rental licenses. However, no equivalent provisions exist for situations in which rental properties become community nuisances.

The proposed ordinance (Attachment 2) would expand existing administrative remedy provisions so that they could be used in situations where there are repeated violations of other specified provisions of the Code. The proposed amendments also raise the level of administrative fines that could be imposed, and make it clear that the conditioning of rental licenses is an alternative to the revocation of such licenses.

In order to apply the new administrative remedies, three or more violations of enumerated provisions of the Code would have to have occurred within twelve months, or five or more separate violations would have had to have occurred within twenty-four months. It would also be required that the holder of a license had been provided notice of the violations, either by the filing of a complaint in Municipal Court related to such violations or by service of a certified notice of violation.

Violations that could serve as a predicate for the application of these new provisions are as follows:

Section 5-3-1, "Assault," B.R.C. 1981;

Section 5-3-2, "Brawling," B.R.C. 1981;

Section 5-3-4, "Threatening Bodily Injury," B.R.C. 1981;

Section 5-3-5, "Obstructing Public Streets, Places, or Buildings," B.R.C. 1981;

Section 5-3-6, "Use of Fighting Words," B.R.C. 1981;

Section 5-3-8, "Disrupting Quiet Enjoyment of Home," B.R.C. 1981;

Section 5-3-11, "Nuisance Party Prohibited," B.R.C. 1981;

Section 5-4-1, "Damaging Property of Another," B.R.C. 1981;

Section 5-4-2, "Damaging Public Property," B.R.C. 1981;

Section 5-4-3, "Trespass," B.R.C. 1981;

Section 5-4-10, "Fires on Public Property," B.R.C. 1981;

Section 5-4-13, "Littering," B.R.C. 1981;

Section 5-4-14, "Graffiti Prohibited," B.R.C. 1981;

Section 5-5-3, "Obstructing a Peace Officer or Fire Fighter," B.R.C. 1981;

Section 5-5-10, "False Reports," B.R.C. 1981;

Section 5-6-1, "Unreasonable Noise," B.R.C. 1981;

Section 5-6-2, "Excessive Sound Levels," B.R.C. 1981;

Section 5-6-6, "Fireworks," B.R.C. 1981;

Section 5-6-7, "Public Urination," B.R.C. 1981;

Section 5-7-2, "Possession and Consumption of Alcoholic Beverages in Public Prohibited," B.R.C. 1981;

Section 5-7-3, "Unlawful to Sell or Give to or Procure for Minors," B.R.C. 1981;

Section 5-7-4, "Possession and Sale by Minors Unlawful," B.R.C. 1981;

A violation of any provision in Chapter 6-3, "Garbage," B.R.C. 1981;

Section 7-4-61, "Obstructing Traffic Prohibited," B.R.C. 1981;

Paragraph 10-8-2(b)(29), "Open Burning," B.R.C. 1981.

Also proposed is an increase in potential civil penalties. This is meant to make such penalties more meaningful. Current provisions provide for a maximum penalty for first-time violations of only \$150.00. Second violations currently can result in a fine not to exceed \$300.00. This level of penalty seems inadequate for the newly defined situations in which there have been repeated nuisance violations in connection with a given rental property. Due process is provided in the proposal by establishing the availability of a quasi-judicial hearing process, including an appeal to the Court, for those situations in which a license holder wishes to contest the imposition of an administrative remedy against his or her rental license.

As drafted, some of the potential amendments to Section 10-3-16, B.R.C. 1981, resemble some of the provisions set forth in the proposed new civil abatement procedure. In each case, the existence of these remedies is intended to assist enforcement personnel in initiating meaningful discussions with landlords. However, the civil nuisance abatement proceedings might have application to people who are not rental license holders. The administrative remedy proceedings defined by this proposal, in contrast, would be limited in application to those who hold rental licenses. As in the proposed civil nuisance abatement proceeding, this provision would potentially allow for conditions to be placed upon a rental license and allow those conditions to be tailored to specific problems. Thus, an order to provide adequate trash containers, to more fully comply with other requirements of the Code, or clarify an acceptable behavior on the part of tenants, might appropriately be imposed.

It is quite possible that the prospect of an action potentially affecting a rental license would have more impact upon a landlord than would the threat of a criminal prosecution. This is so, in part, because it is unlikely any property owner would be sent to jail as a consequence of a criminal prosecution in Municipal Court. Of course, the object of enforcement is not to bring civil, administrative, or criminal actions against rental license holders. Rather, the objective is to obtain compliance with the provisions of the Code intended to maintain the peace and quiet enjoyment of all of the City's citizens and visitors as they enjoy Boulder's various neighborhoods.

### **3. Requirement That Certain Written Disclosures Be Made And Certain Written Records be Maintained with Reference to All Tenants (Lease Standards)**

One of the concerns expressed during UHAG discussions was that some tenants (including some students) in the University Hill area may not be fully aware of occupancy limitations and certain other applicable City regulations. One of the ways that this concern was manifested was with a proposal that a new and more comprehensive "model lease" be developed for use within the City.

In evaluating this area of concern, staff noted that the leases utilized by various landlords vary. In fact, formal written leases are not required by the law and landlord/tenant relationships can be established in a variety of ways. Some such relationships are established by documents called "rental agreements," some by formal "lease" agreements, and others by short lease or rental agreements that are supplemented by site rules and regulations. Some month-to-month tenancies may not include any formal written

agreement at all. Moreover, different housing sites or unique tenancy relationships may require specialized terms and conditions.

"Model leases" are just that. They are tools that landlords may use -- or adapt for usage -- depending upon the needs of their particular rental properties. On the other hand, landlords are not required to use any particular form of lease.

The draft ordinance, attached to this memorandum as Attachment 3, does not force a landlord to use any particular form of lease or rental agreement. It does, however, require that landlords provide to, and obtain from, each tenant certain information. It also requires that this information be provided or maintained in written form. Specifically, the requirements that would be imposed by the ordinance are as follows:

1. The landlord would have to provide each tenant a written document (whether as part of a lease agreement, part of a rental agreement, part of a set of site rules, or in the form of some other written document) containing the following information:
  - a. The maximum occupancy levels permitted in the rental unit in which that tenant will be residing;
  - b. Notice of the provisions contained in Section 5-3-11, prohibiting nuisance parties; Subsection 5-6-1(b), concerning unreasonable late night amplified sound; Section 5-6-2, relating to excessive sound levels; and Section 5-3-8, relating to the disruption of the quiet enjoyment of a home;
  - c. The names of each individual permitted, pursuant to the tenancy agreement, to occupy the rental unit; and,
  - d. Notification to each tenant that violation of the City's noise regulations or the residency within the rental unit of persons other than those occupying the unit pursuant to an agreement with the landlord, can be cause for the termination of the tenancy.
2. The landlord responsible for any rental unit would also be responsible to provide to the City, in writing, the name and phone number of an on-site manager responsible for managing the rental unit, or, if there is no on-site manager, the name, address and phone number of an off-site manager or other responsible person who may be contacted in the event of an emergency or disturbance involving the rental unit.
3. The landlord would be required to maintain, in writing, an accurate listing of the identities of those persons authorized to reside in each of that landlord's rental units. Under normal circumstances, this information would not be provided to the City. However, it might be obtained through the use of a legal process in connection with an administrative or legal action if the identity of the lawful residents of a given unit became pertinent.

Adoption of the proposed ordinance would not be in conflict with the development of a new or more detailed "model lease." However, as noted above, the use of any provisions in a model lease would be strictly voluntary on the part of any landlord. The provisions of the ordinance, if adopted, would be mandatory.



**PUBLIC COMMENT AND PROCESS:**

The UHAG process out of which each of these three proposals grew was a public and well publicized one. The UHAG report (including recommendations for these proposals) was publicly distributed starting in November of 2000. Pursuant to a schedule generated by the City Manager, draft ordinances were prepared and distributed by March 29, 2001. Since that time, copies of the draft ordinances have been maintained on the City Attorney web site and distributed to community members and potentially affected groups.

Since the particular ordinances being considered here would be of special interest to property owners and property managers, it is recommended that any second reading and further consideration of these matters be set for the Council's meeting at the end of September. August is a busy time for property managers who serve students because it is the time that students are moving into their units in anticipation of the new school year. It is thought to be particularly important that property owners and managers be available to comment upon these proposals at a public hearing.

**STAFF RECOMMENDATIONS:**

Staff believes that each of the three ordinances being considered here would assist in resolving community problems under specific circumstances. Each constitutes a potentially useful tool. For that reason, staff believes that each of the three measures are appropriate and recommends their adoption. Staff further recommends that second reading be scheduled for the second meeting in September (September 25).

**ATTACHMENTS:**

A. A proposed ordinance enacting a new Chapter 10-2.5, B.R.C. 1981, concerning nuisance abatement

B. A proposed ordinance amending Section 10-3-16, B.R.C. 1981, concerning administrative remedies with reference to rental housing licenses

C. A proposed ordinance adopting a new Section 10-3-18, B.R.C. 1981, concerning requirement for written disclosures as a condition of a rental license