

PART 7 CIVIL ABATEMENT OF PUBLIC NUISANCES

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9.6.701: POLICY:

A. City Council hereby finds and determines that the abatement of public nuisances for the protection of public health, safety and welfare is a matter of local concern. The purpose of this article is not to punish, but to remedy public nuisances. The remedies provided in this part are directed at the property involved without regard to ownership, title or right of possession and, unless otherwise provided, without regard to the culpability or innocence of those who hold these rights.

B. The public nuisances and the provisions of this part are entirely strict liability in nature. Unless otherwise provided, no culpability or mens rea of any type or degree shall be required for any of the public nuisances, actions, temporary restraining orders or remedies under the provisions of this part. (Ord. 00-104; Ord. 01-42)

9.6.702: DEFINITIONS:

ABATE: To bring to a halt, eliminate or where that is not possible or feasible, to suppress, reduce, and minimize.

BUILDING: A structure, which is enclosed with walls and a roof so that there are no sides left open.

CHIEF OF POLICE: Includes the Chief of Police and any person designated by the Chief of Police to enforce this part.

CLOSE, TO CLOSE, OR CLOSURE: To seize the property and remove all owners, tenants, occupants and other persons and animals from the real property, or a specified discrete portion of the property, and to lock, board, bar and otherwise close and prohibit all entry, access, and use of the real property, or a specified discrete portion of the property, except access and use as may be specifically ordered by the court for purposes of inventory, maintenance, storage,

security and other purposes, and to vest the sole right of possession and control of the real property, or a specified discrete portion of the property, in the City of Colorado Springs for a limited period of time defined by court order.

GANG RELATED CRIMINAL ACTIVITY: Any criminal violation of Federal law, State law or City Code committed by any person or persons, individually or acting jointly through a conspiracy or in complicity, where the person(s) is a member of an association or organization which has as one of its purposes the commission of crime.

LEGAL OR EQUITABLE INTEREST OR RIGHT OF POSSESSION: Every legal and equitable interest, title, estate, tenancy and right of possession recognized by law and equity, including any right or obligation to manage or act as agent or trustee for any person holding any interest or right.

PARCEL: Any lot or other unit of real property or any combination of contiguous lots or units owned by the same person or entity.

PERSON: Natural persons and every legal entity whatsoever, including, but not limited to, corporations, limited liability companies, partnerships, limited partnerships and associations.

PROPERTY: Property of any kind, real or personal.

PUBLIC NUISANCE: Any place where people congregate, which encourages a disturbance of the peace or where the conduct of persons in or about that place annoys or disturbs the peace of the occupants of or persons attending the place, the residents in the vicinity or the passersby on the public street or highway. Evidence of the existence of a nuisance shall include evidence of two (2) or more occurrences of illegal activity in, at or upon the premises. Evidence may include, but shall not be limited to, evidence that two (2) or more of the following illegal activities are occurring in, at or upon the premises, or that the premises are used to commit, conduct, promote, facilitate or aid the commission of any of the following activities (for purposes of this section the illegal activity shall have the same definition as that contained in the pertinent section[s] of the Colorado Revised Statutes [CRS], as amended, or the pertinent section[s] of the Code of the City of Colorado Springs [City Code]):

A. Prostitution, soliciting for prostitution, pandering, keeping a place of prostitution, pimping, or public indecency;

B. Unlawful discharge, possession, carrying, flourishing, concealment, storage, use or sale of firearms, knives and/or assault weapons, dangerous weapons and substances or defaced firearms, or any offense relating to incendiary devices;

C. The selling, serving, giving away, disposing of, exchanging, delivering or permitting the sale, serving, giving or procuring of any malt, vinous, or spirituous liquor or fermented beverage to or for any person under lawful age or to a visibly intoxicated person. However, if a person who, in fact, is not of lawful age exhibits a fraudulent proof of age, then the selling, serving, procuring, giving away or dispensing of beverages to that person shall not constitute evidence of a public nuisance;

D. The sale at retail of any malt, vinous or spirituous liquors, or fermented malt beverages in sealed containers, or the manufacture, sale or possession for sale of any malt, vinous or spirituous liquors, or fermented malt beverages without holding a valid license in full force and effect to do so;

- E. Any gang related criminal activity;
- F. Any drive-by crime;
- G. Any assault, fighting, or disorderly conduct crime;
- H. Possession with intent to distribute, cultivation, manufacture or sale of any illegal drug or controlled substance;
- I. Continuous or recurring violations of fire, sanitary or health codes which either singly or taken as a whole constitute a significant threat to the health, safety or welfare of one or more persons. Violations of this type shall only be actionable as a public nuisance when found in combination with other types of public nuisance violations.

REAL PROPERTY: Land and all improvements, buildings and structures, and all estates, rights and interests, legal and equitable, in land and improvements.

RECEIVERSHIP: Special receivership on the terms set out in this part.

STRUCTURE: Anything constructed, erected or placed upon real property which is so firmly attached to the land as to reasonably be considered part of the real estate, and includes buildings of every type and nature whatsoever. (Ord. 00-104; Ord. 01-42; Ord. 09-96)

9.6.703: PROCEDURE IN GENERAL:

A. Remedies Cumulative And Supplementary: The remedies provided in this part are cumulative and supplementary to any other criminal ordinance or statute, other civil remedies and any administrative proceedings to revoke, suspend, fine or take other action against any license. The City may pursue the remedies provided in this part, criminal penalties provided by other ordinances or statutes, other civil actions or remedies, administrative proceedings against a license or any one or more of these, and may do so simultaneously or in succession.

B. No Delay In Civil Action: In the event that the City pursues both criminal remedies provided in any other section, other civil remedies or the remedies of any administrative action and the remedies of this part, the civil action provided in this part shall not be delayed or held in abeyance pending the outcome of any proceedings in the other criminal, civil or administrative action, or any action filed by any other person, unless all parties to the action under this part so stipulate.

C. Principles: All actions under this part shall be civil and remedial in nature. All issues of fact and law shall be tried to the court without a jury. All seizure, closure, receivership and destruction remedies under this part shall be in rem. Injunctive remedies under this section may be partly in personam. The burden of proof in all proceedings under this part, including proof of the underlying criminal activity forming the basis of a public nuisance, shall be by a preponderance of the evidence, unless a different burden of proof is specified.

D. Jurisdiction, Duties And Power: Pursuant to Colorado constitution article XX, section 6 and City Charter section 8-10, the Municipal Court for the City of Colorado Springs is hereby granted the jurisdiction, duties and powers for this part.

E. Governance Of Proceedings: Proceedings under this part shall be governed by the Colorado Rules of Civil Procedure ("CRCP") unless this part provides a more specific rule. Public

nuisance actions shall be included in the category of "expedited proceedings" specified in CRCP rules 16 and 26. Discovery shall be governed by the Colorado Rules of County Court Procedure. The period of time specified for the filing of an answer is increased to thirty (30) days. Where this part or the CRCP fail to state a rule of decision, the court shall first look to the public nuisance abatement act, Colorado Revised Statutes section 16-13-301 et seq., and the cases decided thereunder.

F. Filing: Actions under this part shall be filed by the Office of the City Attorney for the City of Colorado Springs.

G. Complaint: An action under this part shall be commenced by the filing of a verified complaint or a complaint verified by an affidavit and a motion for temporary restraining order.

H. Parties Defendant To Action: The parties defendant to the action and the persons liable for the remedies in this part include 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 and any other person whose involvement may be necessary to abate the nuisance, prevent it from recurring or enforce the court's orders. None of these parties shall be deemed necessary or indispensable parties.

I. Service:

1. The parties defendant shall be served in accord with the CRCP except as otherwise provided in this part.

2. The summons, complaint and temporary restraining order shall be served upon the real property itself by posting copies of the same in some prominent place on the real property and by serving a copy of the same to any person found in possession at the time of posting.

3. The summons, complaint and temporary restraining order shall be served upon:

a. The owner of the real property as reflected in the records of the El Paso County Assessor's Office in accord with the CRCP.

b. Any on site property manager/landlord of the building housing the rental unit occupied by any tenant(s) who has engaged in the conduct proscribed by this part, by certified mail and deemed perfected when sent to the on site address.

c. Any off site property manager/landlord by certified mail and deemed perfected when sent to the last known address as reflected in the billing records of the Colorado Springs Utilities.

d. Service shall be sent at least thirty (30) days prior to the temporary restraining order becoming effective.

4. For the purposes of computing and calculating periods of time when service is effectuated by this part, service shall be deemed given when served upon the owner of the real property or the property posted, whichever occurs later.

J. Notice Of Lis Pendens: The City may file a notice of lis pendens against the real property subject to this part.

K. Right Of Entry: The City is authorized to enter upon properties for the purposes of posting the notices required by subsection I of this section and section 9.6.704 of this part, and to affix the notices in any reasonable manner to building and structures.

L. Removal Of Notice Prohibited: It is unlawful for any person other than the City or its designee to remove any notice posted under the provisions of this part. Any violation of this subsection shall be considered a separate municipal ordinance violation and shall be punished in accord with chapter 1 of this Code. (Ord. 00-104; Ord. 01-42)

9.6.704: COMMENCEMENT OF PUBLIC NUISANCE ACTIONS; PRIOR NOTIFICATION:

A. Notification Before Filing Civil Actions Under This Part:

1. At least thirty (30) calendar days before filing a civil action under this part, written notice shall be:

a. Posted at some prominent place on the real property.

b. Served upon the owner of the real property and upon any on site and/or off site manager/landlord of the real property if any person can reasonably be determined. The notice shall be served and deemed perfected by mailing, certified mail, return receipt requested, addressed to the owner of the property, as reflected in the records of the El Paso County Assessor's Office, to the on site and/or off site manager/landlord for the real property at the address as is reflected in the billing records of the Colorado Springs Utilities or at such other address as can be determined, and to the registered agent for any common interest community associated with the real property as defined in Colorado Revised Statutes section 38-33.3-101 et seq., if any, at the address reflected in the records of the Colorado Secretary of State.

c. Sent by first class mail addressed to any identifiable tenant or occupant of the specific real property.

d. Sent by first class mail addressed to the holder of the first deed of trust recorded on the real property as reflected on any ownership and encumbrance report, or recorded documents attached thereto, issued by any title company doing business within the State of Colorado.

2. The notice shall describe the nature of the alleged public nuisance, shall identify to the extent possible the person(s) actively involved in the public nuisance and identify the specific real property upon which the public nuisance exists. The notice shall further advise the recipient that an action under this part may be filed unless the recipient enters into a voluntary abatement agreement with the City pursuant to section 9.6.714 of this part within thirty (30) days of service of the notice.

B. Reasonable Assistance: The Colorado Springs Police Department shall provide reasonable assistance in any effort to voluntarily abate the public nuisance.

C. Exception To Prior Notification Requirement: The City shall not be required to provide notification by posting or mailing the notice specified in this section prior to filing a civil action under this part whenever it determines that the owner of the real property is engaged in the public nuisance activity. (Ord. 00-104; Ord. 01-42; Ord. 09-96)

9.6.705: TEMPORARY RESTRAINING ORDERS IN GENERAL:

A. Continuous Effect Of Temporary Restraining Orders: Ex parte temporary restraining orders shall remain continuously in effect unless modified by court order as provided in section 9.6.707 of this part, by stipulation of the parties or after trial on the merits.

B. No Security Or Bond: No security or bond of any type shall be required of the City in obtaining any temporary restraining order under this part.

C. Form And Scope Of Temporary Restraining Order: Every temporary restraining order shall set forth the reason for its issuance, be reasonably specific in its terms and describe in reasonable detail the acts and conditions authorized, required or prohibited, and shall be binding upon the property, the parties to the action, their attorneys, agents and employees and any other person who receives actual notice of the order. (Ord. 00-104; Ord. 01-42)

9.6.706: TEMPORARY RESTRAINING ORDERS; PUBLIC NUISANCES:

A. General: The court shall issue an ex parte temporary restraining order if the complaint, supported by an affidavit, shows by a preponderance of the evidence that there is probable cause to believe that a public nuisance has occurred on, in, or about the real property, or the real property was used to commit, conduct, promote, facilitate or aid the commission of any public nuisance.

B. Seizure Of Real Property And The Contents Of Buildings: The temporary restraining order shall make orders necessary to effect the seizure of real property and the contents of buildings and which are reasonably necessary to access, maintain and safeguard the property. These orders shall become effective within thirty (30) days of the date the temporary restraining order is posted on the real property and served as provided by subsection 9.6.703I of this part, unless within that thirty (30) day period a person claiming a legal or equitable interest or right of possession in the real property files, sets, serves and has heard a motion to vacate or modify the temporary restraining order(s) as provided in subsection 9.6.707C of this part, or unless within that thirty (30) day period a person claiming a legal or equitable interest or right of possession in the real property files, sets, serves and has heard a motion to stay execution of a temporary restraining order as provided in subsection 9.6.707E of this part. The motion shall be heard and determined as provided in subsections 9.6.707C and E of this part. A motion properly brought under subsection 9.6.707C or E of this part shall temporarily stay a temporary restraining order until the conclusion of the hearing. No temporary restraining order shall permit the seizure of real property until this thirty (30) day period has elapsed. (Ord. 00-104; Ord. 01-42)

9.6.707: MOTION TO VACATE OR MODIFY TEMPORARY RESTRAINING ORDER:

A. General: Any party defendant and any person holding any legal or equitable interest or right of possession in any property seized or restrained under this part may file a motion to vacate or modify the temporary restraining order or for return of seized property. Proceedings on these motions shall be as provided below.

B. Motion To Vacate Or Modify Orders Other Than Those Pertaining To Seizure Of Property: Where the specific provision in the temporary restraining order complained of pertains to any matter other than the seizure, retention, closure, or receivership of property, the provision of this subsection shall apply and control.

1. Within thirty (30) days of the date defendant is served with the temporary restraining order, the moving party must:

- a. File the motion to vacate or modify; and
- b. Set the motion for a hearing to be held within twenty (20) days but not less than ten (10) days from the date the motion is filed; and
- c. Personally serve the motion and notice of the hearing on the Office of the City Attorney. Any motion to vacate a temporary restraining order shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing.

2. At the hearing, the City shall have the burden of proving by a preponderance of the evidence that there is probable cause to believe that a public nuisance or public nuisance activity occurred on, in or about the real property, or the real property was used to commit, conduct, promote, facilitate or aid the commission of any public nuisance. The court shall not vacate or modify the temporary restraining order unless it finds that there is no probable cause to believe that a public nuisance occurred or the order is manifestly unreasonable or unjust.

C. Motion To Vacate Or Modify Orders Pertaining To Seizure Of Property: Where a specific provision in the temporary restraining order pertains to the seizure, retention, closure or receivership of property, the provisions of this subsection shall apply and control.

1. Within thirty (30) days of the date the defendant is served with the temporary restraining order, the moving party must:

- a. File this motion; and
- b. Set the motion for a hearing to be held within twenty (20) days but not less than ten (10) days from the date of the filing of the motion; and
- c. Personally serve the motion and notice of the hearing on the Office of the City Attorney. Any motion for return of seized property shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing.

2. At the hearing on the motion for return or release of seized property, the party seeking release and return of the property shall have the burden of proving ownership or a right to possession and that the property is not relevant evidence in any criminal proceeding. The City shall have the burden of proving by a preponderance of the evidence that there is probable cause to believe that a public nuisance or public nuisance activity occurred on, in or about the real property, or the real property was used to commit, conduct, promote, facilitate or aid the commission of any public nuisance. If, at the time of the hearing, the City has already obtained a judicial determination of probable cause through the issuance of a temporary restraining order,

the City shall have no burden of proof, and the party seeking release of the property shall also have the burden of proving that there is no probable cause to believe that a public nuisance occurred on, in or about the real property or that an affirmative defense under section 9.6.710 of this part exists.

3. The court shall not return or release the property to the moving party unless it finds by a preponderance of the evidence that:

- a. The moving party is the owner of the property or presently entitled to possession;
- b. The property is not relevant evidence in a criminal proceeding; and
- c. There is no probable cause to believe that a public nuisance was committed on, in or about the real property or that an affirmative defense under section 9.6.710 of this part exists.

D. Consolidated Hearing On Motion To Vacate, Modify, And Trial On The Merits: Where all parties so stipulate, the court may order the trial on the merits to be consolidated and tried with a hearing on these motions. Where the trial on the merits is not consolidated, any evidence received at the hearing on these motions need not be repeated at trial, but shall be treated as part of the record at trial.

E. Order To Stay Execution Of Temporary Restraining Order: In addition to a motion to vacate or modify orders pursuant to subsections B and C of this section, a defendant may file a motion for stay of execution of a temporary restraining order. Whenever a motion for stay of execution is filed, the provisions of this subsection shall apply and control.

1. Within thirty (30) days of the date defendant is served with the temporary restraining order, the moving party must:

- a. File a motion to stay enforcement of the temporary restraining order; and
- b. Set the motion for a hearing to be held within twenty (20) days but not less than ten (10) days from the date of the filing of the motion; and
- c. Personally serve the motion and notice of the hearing on the Office of the City Attorney.

2. At the hearing, the moving party shall have the burden of proving by a preponderance of the evidence that the defendant is using all reasonable efforts to abate the nuisance activities, and that those efforts are likely to abate the nuisance activities.

3. If the court finds:

- a. The defendant is using all reasonable efforts to abate the nuisance activities;
- b. These efforts are likely to abate the activities giving rise to the public nuisance; and

c. The public health, safety and welfare would not be impaired by granting a stay of execution of the temporary restraining order, the court may grant a stay of execution of the temporary restraining order not to exceed forty five (45) days except where a longer period of time is required by law¹.

4. Any order granting a stay of execution of the temporary restraining order pursuant to subsection E3 of this section shall be reviewed by the court at least five (5) days prior to expiration of the stay. (Ord. 00-104; Ord. 01-42)

9.6.708: REMEDIES FOR PUBLIC NUISANCES:

Where the existence of a public nuisance is established in a civil action under this part, the court shall enter permanent prohibitory and mandatory injunctions requiring the parties defendant to abate the public nuisance and take specific steps to prevent the same and other public nuisances from occurring on the real property. The court shall also order the following remedies:

A. Closure Of Real Property And Destruction Of Certain Structures: That the real property be closed for a period of not less than three (3) months and not exceeding one year from the date of the final judgment, plus any extension of that period caused by a failure to comply with the reasonably necessary conditions for release of the property set by the court. Where reasonably necessary, the court may further order the defendants to carry out destruction of the structures. The court shall order the defendants to provide for maintenance, utilities, insurance and security of the property during the period of closure. At the end of the closure period, the real property shall be released to the owner only upon payment of all actual expenses incurred by the City and payment of all civil judgments under section 9.6.709 of this part. The issuance and execution of the closure order shall not be deemed a bailment of property.

B. Receivership Of Real Property: Where the City so requests, in lieu of closure of real property, the property may be placed into a special receivership for a period not less than three (3) months and not exceeding one year from the date of the final judgment plus any extension of that period caused by a failure to comply with the reasonably necessary conditions for release set by the court. The receiver, appointed ex parte by the court, shall take possession of the property to the exclusion of the owners and other persons holding any legal or equitable interest and their managers and agents then in possession, shall collect rents and profits from the tenants, and shall pay the operating expenses, taxes, utilities and maintenance expenses on the property. The receiver shall not pay the principal or interest on any note, deed of trust, mortgage, or similar instrument, and these obligations shall remain that of the owners and other persons holding any legal or equitable interest in the real property. The court shall periodically award the receiver reasonable fees for the receiver's services to be paid out of the rents, profits and income of the property. The receiver shall account for all income and expenses and the balance, if any, shall be remitted to the property owner. The court may make other reasonable orders consistent with these provisions for the administration of this special receivership. The court shall order the defendant(s) to provide for and pay the maintenance, utilities, security, operating expenses, taxes, insurance, receivership fees and other reasonable expenses related to the property to the extent that the rents, profits and income of the property under the receivership is insufficient to defray these expenses. At the end of the receivership period, the real property shall be released to the owner only upon one payment of all actual expenses incurred by the City for seizure and receivership, and payment of other reasonable expenses not covered by the income under receivership and payment of all civil judgments under section 9.6.709 of this part. The issuance and execution of the receivership order shall not be deemed a bailment of property. The owner of the property remains responsible for the maintenance and security of the

property subject to the receivership order and shall be permitted reasonable access to the property for these purposes upon application to the court. (Ord. 00-104; Ord. 01-42)

9.6.709: CIVIL JUDGMENT:

In any case in which a public nuisance is established, in addition to the remedies provided above, the court shall impose a separate civil judgment on every person who committed, conducted, promoted, facilitated or aided the commission of any public nuisance or who held any legal or equitable interest or right of possession in any real property on or in which any public nuisance occurred. This civil judgment shall be for the purpose of compensating the City for the costs of pursuing the remedies under this part. The civil judgment shall be in the liquidated sum of five hundred dollars (\$500.00) and shall be imposed as a judgment against each defendant independently, separately and severally. (Ord. 00-104; Ord. 01-42)

9.6.710: AFFIRMATIVE DEFENSES:

A. It shall be an affirmative defense to an action brought pursuant to this part that the owner of the property was not involved in the public nuisance or public nuisance activity and that the owner did not know and was not wilfully blind towards the public nuisance or public nuisance activity.

B. It shall be an affirmative defense to an action brought pursuant to this part that the owner has acted diligently and with good faith to correct the nuisance. In addition to any other facts the court considers relevant, the court shall consider the following in determining whether the owner has acted diligently and with good faith:

1. Whether the owner has taken all reasonable steps to abate the public nuisance activity and restrain and prevent future nuisance activity;
2. Whether the steps taken by the owner have been effective, the nuisance no longer exists, and recurrence of the nuisance condition does not appear likely; and
3. Whether the owner or any agent, employee or assign was involved in activity which created or encouraged the public nuisance condition. (Ord. 00-104; Ord. 01-42; Ord. 09-96)

9.6.711: LIEN PROVISIONS:

Any actual expenses incurred by the City for seizure, receivership, closure, abatement, emergency abatement, other reasonable expenses and any judgment entered pursuant to section 9.6.709 of this part, shall be an assessment against the real property. These expenses may include the use of private contractors when appropriate. A lien in favor of the City shall lie against the real property for the amount assessed and may be enforced pursuant to law. (Ord. 00-104; Ord. 01-42; Ord. 09-96)

9.6.712: SUPPLEMENTARY REMEDIES FOR PUBLIC NUISANCES:

In any action in which probable cause for the existence of a public nuisance is established, in the event that the parties defendant, or any one of them, fails, neglects, or refuses to comply with the court's temporary restraining orders, receiverships, closure and other orders, the court may, upon the motion of the City, in addition to or in the alternative to the remedy of contempt,

permit the City to enter upon the 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 temporary restraining orders and other orders. (Ord. 00-104; Ord. 01-42)

9.6.713: OTHER SEIZURES, CLOSURES, FORFEITURES, CONFISCATIONS AND REMEDIES:

Nothing in this part shall be construed to limit or forbid the seizure, confiscation, closure, destruction, forfeiture of property or use of other remedies, now or later required, authorized or permitted by any other provision of law. Nothing in this part shall be construed as requiring that evidence and property seized, confiscated, closed, forfeited or destroyed under other provisions of law be subjected to the special remedies and procedures provided in this part. (Ord. 00-104; Ord. 01-42)

9.6.714: VOLUNTARY ABATEMENT AGREEMENT; STIPULATED ALTERNATIVE REMEDIES:

A. The goal of a voluntary abatement agreement, and other stipulated alternative remedies is to abate the public nuisance, prevent public nuisances from recurring, deter public nuisance activity and protect public interest. The City, through the City Attorney's Office, and any party defendant to an action under this part may voluntarily stipulate to orders and remedies that are different from and may be less stringent than the remedies provided in this part. The voluntary abatement agreement entered pursuant to this part is designed to voluntarily abate the public nuisance activity occurring on the real property and provide reasonable measures to prevent public nuisances from recurring on the real property. The voluntary abatement agreement shall address all public nuisance activity occurring on the real property at the time of its execution.

B. The Colorado Springs Police Department shall render reasonable assistance to effectuate the voluntary abatement agreement.

C. The court shall make the stipulations and voluntary abatement agreements an order of the court and enforce the same. The remedies provided in this part shall be applicable in the event of noncompliance with the voluntary abatement agreement.

D. Compliance and completion of a voluntary abatement agreement shall preclude a civil action from being filed pursuant to this part for the public nuisance activity, which was the subject of the voluntary abatement agreement. Nothing herein shall preclude the filing of a civil action pursuant to this part for new public nuisance activity occurring on the real property after completion of the voluntary abatement agreement, or activity not addressed in the voluntary abatement agreement. (Ord. 00-104; Ord. 01-42)

9.6.715: NUISANCE ABATEMENT ADVISORY COMMITTEE:

~~A. There is hereby established a Nuisance Abatement Advisory Committee. The Nuisance Abatement Advisory Committee shall oversee the implementation and administration of this part. The Nuisance Abatement Advisory Committee shall meet as the members may deem necessary. The Colorado Springs Police Department shall notify the Nuisance Abatement Advisory Committee concerning enforcement actions taken pursuant to this part once notice has been given as provided in section 9.6.704 of this part. The Nuisance Abatement Advisory Committee may make recommendations and reports to City Council concerning this part but shall not have veto or approval authority over the commencement of any action under this part.~~

~~B. The Nuisance Abatement Advisory Committee shall consist of not more than eight (8) members. Members of the Committee may consist of individuals from the following fields including, but not limited to:~~

- ~~1. A representative from a registered neighborhood organization; and~~
- ~~2. A representative from the liquor and restaurant industry; and~~
- ~~3. A representative from the mortgage lending industry; and~~
- ~~4. A representative from the real estate/property management industry; and~~
- ~~5. A representative from the apartment/multi family resident management industry; and~~
- ~~6. A representative from the residential property management industry; and~~
- ~~7. A private property owner; and~~
- ~~8. A representative of the hotel/motel/hospitality industry.~~

(Ord. 00-104; Ord. 01-42; Ord. 06-51)

9.6.716: LIMITATION ON ACTION:

Actions under this part 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 public nuisances that occurred more than one year before the filing of the complaint when relevant for any purpose. (Ord. 00-104; Ord. 01-42)

9.6.717: SEVERABILITY:

In the event that any provision of this part is declared to be unconstitutional or invalid for any reason, the remaining provisions shall be upheld and enforced unless the remaining provisions would create an unreasonable or unjust result. (Ord. 00-104; Ord. 01-42)

9.6.718: EXPIRATION OF THIS PART:

(Ord. 00-104; Ord. 01-42; Rep. by Ord. 03-106)

9.6.719: SUMMARY ABATEMENT BY THE CHIEF OF POLICE:

A. Whenever the Chief of Police determines that an emergency exists which both constitutes a nuisance and which requires immediate action to protect the public health, safety or welfare, the Chief of Police may initiate an emergency abatement by bringing the circumstances to the attention of the Municipal Court. The request for court ordered emergency abatement shall be made by the Chief of Police in writing and shall specify the form of relief requested. The request shall be accompanied by an affidavit setting forth the facts and circumstances which represent a nuisance and which requires immediate action to protect the public health, safety or welfare.

B. The Presiding Judge, upon a finding of probable cause that a condition exists which constitutes a nuisance and which requires immediate action to protect the public health, safety or welfare, may issue an order for abatement specifying relief as deemed appropriate by the court and shall order the Police Chief to take immediate corrective action to protect the public.

C. A person claiming a legal or equitable interest or right of possession in the real property may file, set, serve and have heard a motion to vacate or modify the emergency abatement order.

1. Any motion to vacate an emergency abatement order shall state specifically the factual and legal grounds upon which the motion is based. The motion shall be heard within ten (10) days of filing, but no sooner than two (2) business days after filing. The motion shall be personally served on the Prosecution Division of the Office of the City Attorney when the motion is filed.

2. At hearing, the City shall have the burden of proving by a preponderance of the evidence that a condition exists which constitutes a nuisance and which requires action to protect the public health, safety or welfare.

a. If the court finds that the emergency condition has been abated, and is not likely to reoccur, the court shall terminate its abatement order.

b. If the emergency condition continues to exist, the court shall issue orders necessary to abate the condition.

c. All orders under this section shall expire thirty (30) days from the granting of the abatement order unless the City Attorney's Office has initiated a nuisance action.

D. A report on the actions taken pursuant to the emergency abatement order shall be provided by the Chief of Police to the Municipal Court, in writing, no later than two (2) business days after the corrective action has commenced. The Chief of Police shall make reasonable efforts to promptly provide the owner of the property with a copy of this report.

E. Any person directed to leave the property by the emergency order or directed to cease and desist from conduct by the emergency order shall comply immediately and it shall be unlawful to fail or refuse to comply immediately.

F. In the event that the person in possession of the property fails or refuses to comply immediately, the Chief of Police may, without prior notice to the owner, occupant or agent of the owner, take the corrective action as ordered by the court.

G. Any expenses incurred by the City in enforcing the emergency abatement order shall be recovered as set out in this part.

H. No security or bond of any type shall be required of the City in obtaining any emergency abatement order under this part. (Ord. 09-96)

Footnotes - Click any footnote link to go back to its reference.

Footnote 1: This provision is necessary in the event that eviction proceedings require a greater period of time.