

Article 1
PUBLIC HEALTH AND SANITATION - GENERAL PROVISIONS

6.1.101: PURPOSE:

The City Council hereby finds, determines and declares that it is necessary and conducive to the protection of the public health, safety and general welfare to provide a healthful, sanitary and clean environment for the residents of the City. This chapter shall be liberally construed and strictly enforced to accomplish this purpose. (1980 Code; Ord. 01-42)

6.1.102: DEFINITIONS:

The following terms, as used in this chapter, shall have the meanings hereinafter designated, unless the context specifically indicates otherwise or unless the meaning is excluded by express provision:

ADMINISTRATOR; CODE ENFORCEMENT ADMINISTRATOR: **The Manager of Community Development or the Manager's** designee responsible for enforcing the health, sanitation and housing ordinances of the City, or the Code Enforcement Administrator's designee.

BOARD OF HEALTH: The Board of the El Paso County Department of Health and Environment.

CODE ENFORCEMENT OFFICER: The designated representative of the Administrator who is responsible for enforcing the provisions of this chapter.

DEPARTMENT OF HEALTH OR THE HEALTH DEPARTMENT: The El Paso County Department of Health and Environment or its authorized employees.

MAYOR: The Mayor of the City of Colorado Springs, Colorado, or the Mayor's designated representative.

MEDICAL DIRECTOR: The Medical Director of the El Paso County Department of Health and Environment, or the Medical Director's designated representative. (1980 Code; Ord. 82-226; Ord. 96-109; Ord. 01-42; Ord. 03-121; Ord. 11-19)

6.1.103: HEALTH SERVICES COOPERATION:

The City may cooperate with any County or district health department which may be organized and operated pursuant to Colorado Revised Statutes section 25-1-501, and which includes the City within its permissible jurisdiction under the law, for health services to be rendered to the City and its inhabitants. Such services may include, but shall not be limited to, maintenance and operation of health clinics or other health facilities, control and/or eradication of pests and disease, establishment and

enforcement of regulations and standards concerning health and sanitation within the City, maintenance of vital statistics and other appropriate records and any inspection, analysis, testing or other similar activity incidental to providing these services. Any cooperation existing on the effective date of this Code shall remain in full force and effect according to its terms. (1980 Code; Ord. 96-109; Ord. 01-42)

6.1.104: RULES AND REGULATIONS:

Except as otherwise provided in this chapter, all matters of health and sanitation within the City shall be governed by and in accord with the rules, regulations, standards, methods, procedures and/or guidelines established, adopted or otherwise promulgated by the Colorado Department of Public Health and Environment or by the El Paso County Department of Health and Environment. In the event of any inconsistency or conflict between or among any of the aforementioned rules, regulations, standards, methods, procedures or guidelines, the more stringent shall apply. (1980 Code; Ord. 96-109; Ord. 01-42)

Article 5 PUBLIC HEALTH AND SANITATION - ENFORCEMENT

6.5.101: LEGISLATIVE DECLARATION; AUTHORIZATION:

To fulfill the purpose of this chapter, section 6.1.101 of this chapter, City Council hereby finds and determines that each provision of the Housing Code is intended to protect the public health, safety and general welfare and to provide a healthful, sanitary and clean environment for the residents of the City. The Administrator or Medical Director is hereby authorized to enforce all provisions of this chapter within the City. City Council further finds and determines that certain sections of the Housing Code are intended to address serious life safety standards and hereby authorizes and encourages the Code Enforcement Administrator to enforce the following sections and subsections of the Housing Code to the fullest extent:

Subsections 6.12.301A, B, C, D, G, H and J Subsections 6.12.302D and E

Subsection 6.12.304A

Subsections 6.12.305A, C, D and F Section 6.12.306

Subsection 6.12.401G Section 6.12.404

Section 6.12.405

(1980 Code; Ord. 82-226; Ord. 96-109; Ord. 01-42; Ord. 04-68)

6.5.102: RIGHT OF ENTRY:

A. Where the Administrator or Medical Director has reasonable cause to believe that there may exist on any premises located within the City a condition which is dangerous to the public health, safety or welfare, the Administrator or Medical Director may enter upon any premises at any reasonable hour for the purpose of inspecting, abating, removing or preventing any dangerous condition.

B. In the event that the owner or occupant of any premises located within the City refuses to permit entry by the Administrator or Medical Director when entry is sought pursuant to subsection A of this section, or the owner or occupant has received a notice and order and either failed to appeal the notice and order within ten (10) days or failed to abate a dangerous condition within the period specified in the notice and order, the Administrator or Medical Director may make application to any Judge of the Municipal Court of the City for the issuance of an inspection **and / or an inspection and abatement** warrant. The application shall identify the premises upon which entry is sought and the purpose for which entry is desired, and shall state the facts giving rise to the belief that a condition which is dangerous to the public health exists at the premises and otherwise conform with the requirements of CMCR 241. Any warrant issued pursuant to the application shall command the owner or occupant to permit entry by the Administrator or Medical Director for the purpose stated. (1980 Code; Ord. 82-226; Ord. 96-109; Ord. 01-42; Ord. 03-121)

6.5.103: ABATEMENT; COMMENCEMENT OF PROCEEDINGS:

Whenever the Administrator or Medical Director has reasonable cause to believe that there exists on any premises located within the City a condition which is dangerous to the public health, safety and welfare which violates any provision of this chapter or any rule or regulation of the Health Department, or which is declared by any provision of this chapter to be a public nuisance, the Administrator or Medical Director may commence abatement proceedings by requesting the Administrator to commence proceedings. (1980 Code; Ord. 82-226; Ord. 96-109; Ord. 01-42)

6.5.104: NOTICE AND ORDER:

A. The Administrator shall commence abatement proceedings pursuant to this article by issuing a notice and order to the owner, or agent of the owner and occupant of any premises upon which it has reasonable cause to believe a condition as described in section 6.5.103 of this article exists.

B. The notice and order shall:

1. Be in writing;

2. Be personally served whenever feasible on the owner or agent of the owner and occupant of the premises or, when personal service is not feasible, either posted conspicuously at the premises or mailed to the person by certified mail, return receipt requested, to the person's last known address;

3. Describe with reasonable particularity the condition existing on the premises which gives rise to the issuance of the notice and order;

4. Specify a reasonable period within which the condition must be abated or

otherwise corrected; and

5. State that an appeal is available to the Municipal Court Referee provided written application is made within ten (10) days of service, posting or receipt of the notice and order. (1980 Code; Ord. 81-127; Ord. 82-226; Ord. 96-109; Ord. 01-42; Ord. 03-15; Ord. 04-280)

6.5.105: APPEAL OF NOTICE AND ORDER; HEARING:

All appeals of notice and orders, **emergency orders, and assessments of reinspection fees** under this chapter shall be filed and heard in accord with chapter 11 of the City Code. (Ord. 96-109; Ord. 97-131; Ord. 01-42; Ord. 04-68)

6.5.106: FAILURE TO COMPLY WITH ORDER TO ABATE:

A. Noncompliance Prohibited: It shall be unlawful for any person to fail or refuse to comply with any order issued to the person pursuant to this article.

B. Abatement By Administrator: In the event that any order issued pursuant to this article is not complied with at such reasonable time as is specified therein, the Administrator may direct to remove, correct or otherwise abate through private contract the condition giving rise to the issuance of the order to abate.

C. Compliance Failure; Fee: Notwithstanding the provisions of subsection D of this section, a property owner who has never previously been issued a notice and order for a violation of article 12 of this chapter, and who fails to comply with an order to abate, may be assessed a first offense reinspection fee of one hundred dollars (\$100.00) for every reinspection necessitated by the owner's continued noncompliance with the notice and order to abate.

D. Inspection Fees For Repeat Offenders:

1. For purposes of this section, "repeat offender" is defined as an owner of property who has been issued and failed to abate one or more notice and order for a violation of article 12 of this chapter at least two (2) or more times during any successive six (6) month period-, **or has been issued five (5) or more Notice and Orders pursuant to section 6.5.104 for violations of article 12 of this chapter on separate days within a consecutive twelve (12) month period regardless of whether the owner of the property has abated the individual violations in compliance with the Notice and Order.** The "owner of property" shall be the owner of record as reflected in the records of the El Paso County Assessor. The previous violations may have occurred at one or more properties owned by the owner cited. An owner who has been designated a repeat offender for a period of twelve (12) or more successive months, shall be redesignated as a "chronic repeat offender". For purposes of this section, "reinspection" is defined as any and all inspections at any property owned by a repeat offender or chronic repeat offender, after the classification of the person as a repeat offender or

chronic repeat offender.

2. The Administrator is authorized to assess a fee of not less than two hundred fifty dollars (\$250.00) for each reinspection necessitated by a repeat offender's continued noncompliance with any notice and order to abate **or the issuance of a new Notice and Order pursuant to section 6.5.104.** The Administrator is authorized to assess a fee of not less than five hundred dollars (\$500.00) for each reinspection necessitated by a chronic repeat offender's continued noncompliance with any notice and order to abate, **or the issuance of a new Notice and Order pursuant to section 6.5.104.** The Administrator shall regularly reinspect until the owner successfully complies with the notice and order to abate.

3. In the event one or more reinspection fees are assessed and the repeat or chronic repeat offender (collectively "offender") or the offender's agent fails to pay the fee(s) within twenty (20) days, the Administrator is authorized to file a lien against the property for the fee(s) in accord with section 6.5.107 of this article. The Administrator is further authorized to include in one lien assessment

action any and all costs incurred by the City associated with the removal, correction or other abatement necessitated by the offender's continued violation and failure to abate following issuance of a notice and order to abate.

4. The Administrator shall remove a "repeat offender" designation if the owner has no further violations on any property owned by the person for a period of six (6) months. If a repeat offender designation is removed, and the owner has a subsequent violation on any property owned by that person after the designation is removed, that owner shall be immediately designated a "repeat offender".

5. The Administrator shall remove a "chronic repeat offender" designation if the owner has no further violations on any property owned by the person for a period of twelve (12) months. If the chronic repeat offender designation is removed, and the owner has any subsequent violation on any property owned by that person after the designation is removed, that owner shall be immediately designated a "chronic repeat offender". (Ord. 96-109; Ord. 98-85; Ord. 01-42; Ord. 04-69)

6.5.107: LIEN ASSESSMENT:

A. Authority: When the owner or occupant of property fails to comply with an order to abate pursuant to section 6.5.106 of this article and the Administrator has reinspected and removed, corrected or otherwise abated the condition giving rise to the issuance of the notice and order through a private contract, the Administrator is hereby authorized to commence lien assessment proceedings against the property in accord with the provisions of this section. In addition, the Administrator is further authorized to assess an administrative surcharge of twenty five percent (25%) of the cost of private abatement.

B. Notice: Within ten (10) days of abatement through a private contract, the Administrator shall ascertain the name and address of the property owner from the El Paso County Assessor's records and shall send the property owner a notice of lien assessment which shall contain the following information:

1. The address of the property to be assessed and the name and address of the property owner;
2. The dates of the notice and order, any reinspection and the order to abate;
3. The name of the private contractor which abated the condition giving rise to the issuance of the notice and order;
4. The total amount of the assessment, including reinspection fees, the cost of private abatement and the amount of the administrative surcharge;
5. A due date for payment of the assessment which is not less than twenty (20) days after the date of the notice of lien assessment;
6. A statement that failure to pay the assessment within the time period set forth in the notice of lien assessment will result in the imposition of a lien against the property;
7. A statement explaining the appeal procedure for the notice of lien assessment.

C. Service Of The Notice Of Assessment:

1. Mailing: The notice of assessment shall be mailed to the property owner via certified first class U.S. mail, return receipt requested. A return receipt signed by the property owner or an agent of the property owner shall be prima facie evidence of service on the date indicated by the owner, agent or U.S. Postal Service.
2. Posting: In the event the property owner or an agent of the property owner fails to receive service of the notice of lien assessment via certified first class U.S. mail, return receipt requested, the Administrator is authorized to post the notice in a conspicuous place on the property to be assessed.

D. Appeal And Hearing:

1. Time: A property owner must appeal a notice of lien assessment in writing within ten (10) days of its mailed receipt by the property owner or the owner's agent, or within ten (10) days of posting on the property to be assessed.
2. Contents: The notice of appeal must state the name and address of the property owner, the address of the property assessed, and the grounds for appeal.

3. Hearing: The appeal of a notice of lien assessment shall be heard by the Municipal Court Referee, in accord with the procedures outlined in chapter 11 of this Code.

4. Decision: The Referee may, after hearing the property owner's objections, make any modification or change to the assessment as may seem equitable and just, or may confirm the assessment. The Referee shall not modify or change the amount of the reinspection fee or the administrative surcharge.

E. Lien Assessment: If not appealed, the total assessment shall then be levied, assessed and charged against the property upon which abatement action was taken not less than ten (10) days after the property owner's or agent's mailed receipt of the notice of lien assessment or posting on the property to be assessed. If appealed, Referee's determination of the total assessment shall then be levied, assessed and charged against the property upon which abatement action was taken not less than ten (10) days after the date of the Referee's determination. In either event, the assessment shall become a perpetual lien against the property, superior and prior to all other liens and encumbrances excepting liens for general and special taxes. The Administrator shall notify the Chief Financial

Officer who shall certify any lien assessment to the El Paso County Treasurer who shall collect the lien assessment in the same manner as ad valorem taxes are collected. (Ord. 98-85; Ord. 01-42; Ord. 03-15; Ord. 04-280; Ord. 11-19)

6.5.108: ABATEMENT; EMERGENCY ORDER:

A. Whenever the Administrator or Medical Director deems that an emergency exists which requires immediate action to protect the public health, safety or welfare, the **Administrator or Medical Director** may, without prior notice or hearing, issue an order stating that the emergency exists and requiring that the action be taken as deemed necessary to meet the emergency. Notwithstanding any provision of this article to the contrary, the order shall be effective immediately.

B. Any person to whom the emergency order is issued shall comply immediately and it shall be unlawful to fail or refuse to comply immediately.

C. In the event that the person to whom the emergency order is issued fails or refuses to comply immediately, the Administrator **or Medical Director** may without prior notice to the owner, occupant or agent of the owner, remove, correct or otherwise abate the condition giving rise to the issuance of the emergency abatement order. Except as otherwise provided, the provisions of subsection 6.5.106B and section 6.5.107 of this article shall apply to the removal, correction or other abatement. (1980 Code; Ord. 81-127; Ord. 82-226; Ord. 96-109; Ord. 01-42; Ord. 03-121)

6.5.109: ADDITIONAL REMEDIES:

The remedies provided in this chapter shall be cumulative and in addition to any other remedies which may be available to the Administrator or Medical Director. Nothing contained in this chapter shall be construed to preclude the Administrator or Medical Director from seeking other remedies in addition to, or in lieu of, the remedies granted. The Code Enforcement Administrator is specifically authorized to issue a summons and complaint for failure to abate a violation determined to affect serious life safety standards¹. (1980 Code; Ord. 82-226; Ord. 96-109; Ord. 01-42; Ord. 03-121; Ord. 04-68)

6.5.110: ADOPTION OF RULES AND REGULATIONS:

A. The Administrator is authorized to adopt written rules and regulations necessary for the proper enforcement of the provisions of this chapter, so long as those rules and regulations do not conflict with the provisions of this chapter. Any rules and regulations pertaining to article 12 shall include only those rules and regulations necessary to implement article 12 and not establish new standards for housing. The procedure for the adoption or amendment of rules and regulations shall be as follows:

- 1. The Administrator shall hold a public hearing on all proposed rules, regulations and amendments thereto, after at least five (5) days' public notice by publication in the official newspaper. The notice may set forth the rules and/or amendments, or may consist of a brief statement thereof, and shall include the time, date and place of the public hearing.**
- 2. The Administrator shall take under advisement any evidence presented at the hearing, in establishing the rules and regulations, and all rules and regulations and amendments thereto shall be subject to the approval of the Mayor and the City Attorney.**
- 3. After the approval, the rules and regulations shall be published in one of the following ways:**
 - a. By publication in full one time in the official publication, or**
 - b. By publication of a notice in the official publication that rules and regulations have been adopted and are on file with the Office of the City Clerk.**
- 4. All rules and regulations shall become effective upon the publication and filing.**
- 5. Any rules or regulations so adopted may be repealed by the Administrator with the approval of the Mayor and the City Attorney, by publication through one of the two (2) methods provided, and by filing of the repealer with the City Clerk.**

B. Whenever communicable diseases or the sanitary condition of the City shall be of such character as to warrant emergency rules and regulations, it shall be the duty of the Administrator or Medical Director to make rules and regulations deemed necessary to protect the public safety and health. Rules and regulations which are declared to be emergency rules and regulations, though not herein or otherwise authorized, shall be adopted formally by the procedure set forth in this section as soon as may be practical after promulgation of the same.

**Article 5
MUNICIPAL COURT REFEREE**

11.5.106: NOTICE AND ORDER / REINSPECTION FEE ASSESSMENT APPEAL HEARINGS:

A. Any owner or occupant of property aggrieved by the issuance of a notice and order **or the assessment of reinspection fees** by the Code Enforcement Administrator may appeal the notice and order **or the assessment of reinspection fees** by filing a notice of appeal with the Code Enforcement Administrator within ten (10) days of the date of mailing, posting or personal service of the notice and order **or the assessment of reinspection fees**.. The written notice of appeal shall specify the grounds for the appeal and must include the following:

1. A citation to the explicit ordinance provisions which are in dispute;
2. An explanation of how the notice and order **or the assessment of reinspection fees** was improperly issued due to one or more of the following:
 - a. It was against the express language of the City Code; or
 - b. It was against the express intent of the City Code; or
 - c. It is unreasonable; or
 - d. It is not supported by the facts.

B. Any person pursuing an appeal of the issuance of a notice and order shall be responsible for the payment of all fees and for the completion of all forms that may be prescribed. Failure to pay any required fee or to properly complete any required form shall be deemed a waiver of the right to appeal.

C. The hearing date before the Referee shall be at least twenty two (22) days after the date of filing of the notice of appeal. **The Referee shall notify the Code Enforcement Administrator of the hearing date, time and location and the Code Enforcement Administrator shall post public notice of the hearing date, time and**

location conspicuously upon the affected premises. **The Code Enforcement Administrator or designee may appear at the hearing but is not required to do so.**

D. Before rendering a decision, the Referee shall hold a public hearing on the matter raised in the notice of appeal. As an appeal hearing is a quasi-judicial proceeding, no subpoena may be issued to compel the attendance of any person, and no oath or affirmation shall be required prior to the giving of testimony. The Referee shall not be bound by the Colorado Rules of Civil Procedure or the Colorado Rules of Evidence. The Referee may consider hearsay evidence, or any other evidence reasonably calculated to assist the Referee in rendering a decision, and may give it whatever weight the Referee deems appropriate. The Referee may admit any relevant evidence that a reasonable and prudent person would rely upon in the conduct of everyday affairs. Depending upon the nature or complexity of the appeal, the Referee may direct or order that the Code Enforcement Administrator

and appellant submit, prior to the hearing, any documentary or demonstrative evidence that they plan to present during the hearing, which shall be subject to discovery to the other party.

E. A verbatim record of the public hearing shall be kept and the Referee shall preserve the findings of fact and conclusions of law in the record for each item or matter heard for at least sixty (60) days after final agency action by the Referee.

F. The Presiding Judge of the Municipal Court may adopt appropriate rules of procedure for appeal hearings conducted by the Municipal Court Referee.

G. A perfected appeal shall operate as a stay of the enforcement action unless the Code Enforcement Administrator certifies in writing under oath that a stay would cause or result in an imminent hazard to the public health, safety and welfare. (Ord. 04-70)

11.5.107: APPEAL HEARING DECISION

A. The Referee shall make a decision on each appeal after considering the evidence presented at the hearing. The Referee shall determine whether: 1) the notice and order **or the assessment of reinspection fees** was properly issued in accord with the provisions of the City Code, and 2) there are grounds for the ordered abatement **or assessment of reinspection fees**, and shall render the decision by making findings of fact and conclusions of law that support the decision. Whenever particular review criteria are set forth in the City Code, the Referee shall apply the findings of fact to the criteria.

B. The Referee's decision shall be final agency action (Ord. 04-70)