

EFFECTIVE DATE: 9-29-18

ORDINANCE NO. 2018- 33

A BILL

FOR AN ORDINANCE AMENDING CHAPTER 62, ARTICLE II, DIVISION 2,
OF THE CITY CODE OF THE CITY OF AURORA COLORADO, RELATED
TO NUISANCE PROPERTY USED IN CONNECTION WITH CERTAIN
CRIMES

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

Section 1. That the city Code of the City of Aurora, Colorado, is hereby amended by
adding a section, to be numbered 62-60, which section reads as follows:

Sec. 62-60. – Legislative Purpose.

The abatement of local public nuisances for the protection of public health, safety and
welfare is a matter of purely local and municipal concern. Criminal activity on a property is a
public nuisance. The purpose of this Division 2 is to eliminate public nuisances created by the use
of property in connection with certain crimes. The remedies provided in this Division are designed
to fulfill that purpose to make property owners vigilant in preventing crime on or in their property;
to make property owners responsible for the use of their property by tenants, guests and occupants;
and to otherwise deter criminal activity on private property within the City limits.

Section 2. That Section 62-61 of the city Code of the City of Aurora, Colorado, is hereby
amended to read as follows:

Sec. 62-61. - Definitions.

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

Agent means, if applicable, either a resident manager or a property manager.

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

Controlled substance means the same as in C.R.S. § 18-18-102(5).

Controlled substance analog means the same as in C.R.S. § 18-18-102(6).

Court means the Aurora municipal court.

Criminal nuisance property means any kind of structure, edifice, building, or unit(s) thereof
on or in which any of the following activities has occurred or is occurring, or used to commit,
conduct, promote, facilitate, or aid the commission of any of the following activities:

- (1) Prostitution within the meaning of city Code section 94-216; and/or within the meaning of C.R.S. §§ 18-7-201, 18-7-202, 18-7-203, 18-7-204, 18-7-205, 18-7-206;
- (2) Human trafficking within the meaning of C.R.S. §§ 18-3-503 or 18-3-504;
- (3) Professional Gambling within the meaning of C.R.S. § 18-10-102(8); gambling on premises, C.R.S. § 18-10-102(5); or keeping of a gambling record, C.R.S. § 18-10-102(7); and/or acts within the meaning of city Code section 94-281;
- (4) The unlawful manufacture, cultivation, growth, production, processing, or possession of marijuana within the meaning of city Code section 22-573; and/or within the meaning of C.R.S. § 18-18-405;
- (5) The unlawful manufacture, cultivation, growth, production, processing, sale, distribution, storage or use, or possession for any unlawful manufacture, sale, distribution or use of a controlled substance, C.R.S. § 18-18-405, or a controlled substance analog, C.R.S. § 18-18-102, or an imitation controlled substance, C.R.S. § 18-18-421; except for possession of less than sixteen ounces of marijuana.
- (6) Unlawful manufacture, sale, or distribution of drug paraphernalia, C.R.S. § 18-18-426;
- (7) Prostitution of a child, C.R.S. § 18-7-401(7); soliciting for child prostitution, C.R.S. § 18-7-402; pandering of a child, C.R.S. § 18-7-403; keeping a place of child prostitution, C.R.S. § 18-7-404; pimping a child, C.R.S. § 18-7-405; or inducement of child prostitution, C.R.S. § 18-7-405.5; or
- (8) Sexual exploitation of children, C.R.S. § 18-6-403.

Delivery means the same as in C.R.S. § 18-18-102(7).

Distribution means the same as in C.R.S. § 18-18-102(11).

Gambling means the same as in section 94-276 of this Code.

Imitation controlled substance means the same as in C.R.S. § 18-18-420(3).

Manufacture means the same as in C.R.S. § 18-18-102(17).

Marijuana means the same as in subsection 94-218(a) of this Code.

Owner means any person, agent, firm, corporation, association, or partnership including:

- (1) Any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety of the whole or of a part of the property; or
- (2) A mortgagee in possession in whom is vested:
 - a. All or part of the legal title to property; or
 - b. All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

Person means any natural person, association, partnership, or corporation capable of owning or using property in the city.

Production means the same as in C.R.S. § 18-18-102(30).

Prostitution means the same as in section 94-216 of this Code.

Sale means the same as in C.R.S. § 18-18-102(33).

Structure means any type of building, dwelling, edifice, enclosure, garage, house, room, shed, shop, store, warehouse, or unit thereof.

Section 3. That Section 62-62 of the city Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 62-62. - Criminal nuisance property prohibited.

- (a) It is unlawful for any structure to be employed or used as criminal nuisance property within the city. If a structure is found to be used or employed in violation of this subsection, it is subject to closure for a period of up to one year.
- (b) It is unlawful for any person to employ, use, or maintain, or make available or allow the employment, use, or maintenance of structures as criminal nuisance property within the city. Any person who fails to voluntarily cease the use or occupancy of a structure as required by this division may be removed pursuant to a court order after notice and an opportunity to be heard by the court having jurisdiction of an action brought pursuant to this division. The court of original jurisdiction for these matters shall be the municipal court of Aurora.

Section 4. That Section 62-63 of the city Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 62-63. - Closure procedure.

- (a) When the chief of police believes that a structure is being employed, used, or maintained in violation of section 62-62, the chief of police may commence proceedings to cause the closure of the structure. Except in cases brought pursuant to section 62-66, if the chief of police wishes to commence proceedings:
 - (1) The chief of police shall notify the owner of record in writing that the structure has been determined to be criminal nuisance property. The notice shall contain the following information:
 - a. The street address or a legal description sufficient for identification of the premises on which the structure is located.
 - b. A statement that the chief of police has found the structure to be in violation of this article with a concise description of the conditions leading to his or her findings.
 - (2) A copy of the notice shall be served on the owner or his or her agent at least ten days prior to the commencement of any judicial action by the city. Service shall be made either personally or by mailing a copy of the notice by certified mail, postage prepaid, with

return receipt requested, to the person at his or her address as it appears on the last tax assessment or as may be otherwise known to the chief of police.

- (3) A copy of the notice shall also be served on the occupant of the structure not less than ten days prior to the commencement of any judicial proceeding and shall be made either personally or by mailing a copy of the notice by certified mail, postage prepaid, with return receipt requested, to his or her at the structure.
 - (4) A copy of the notice shall also be posted upon the property not less than ten days prior to the commencement of any judicial proceedings.
 - (5) The failure of any person or owner to receive actual notice of the determination by the chief of police shall not invalidate or otherwise affect the proceedings under this division.
- (b) If the subject property continues as a criminal nuisance property in spite of the giving of the notices described in subsection (a) of this section, the city attorney's office is authorized to commence civil proceedings in court seeking the closure of the structure as well as the imposition of civil penalties against any or all the owners thereof and any such other relief as may be deemed appropriate. No fees shall be assessed for filing pleadings in connection with the enforcement of this division.

Section 5. That Section 62-64 of the city Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 62-64. - Enforcement of closure order; costs; civil penalty.

- (a) If a court finds that a structure constitutes criminal nuisance property as defined in this division, the court may order that it shall be closed for any period of up to one year and that the owner pays to the city a civil penalty to be determined by the court taking into consideration the factors enumerated in subsection (d) of section 62-65.
- (b) The court may also authorize the city to physically secure the structure against use or occupancy if the owner fails to do so within the time specified by the court. If the city is authorized to secure the property, all costs reasonably incurred by the city to effect a closure shall be made an assessment lien upon the property. As used in this subsection, the term "costs" means those costs actually incurred by the city for the physical securing of the structure. The city shall prepare a statement of costs to be used for the labor and materials and administrative fees. Liens imposed by this division shall be collected in all respects as property taxes.
- (c) Any person who is assessed the costs of closure or a civil penalty by the court shall be personally liable for the payment thereof to the city.
- (d) Should the court order closure of the structure, the owner shall continue to provide for the maintenance, environmental clean-up, sanitation, utilities, insurance, and security of the property during the period of closure.

Section 6. That Section 62-65 of the city Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 62-65. - Commencement of actions; burdens of proof; defenses; mitigation of civil penalty.

- (a) Except in a proceeding under section 62-66, if after notice but prior to the commencement of proceedings pursuant to this division an owner specifically stipulates with the city that he or she will pursue a course of action as the parties agree will necessarily abate the conditions giving rise to the violation, the city may agree to stay the commencement of proceedings. However, if the city reasonably believes the owner is not diligently pursuing the action contemplated by the stipulation, it may then commence proceedings pursuant to this division.
- (b) In an action seeking civil penalties from an owner or the closure of a structure as criminal nuisance property, the city shall have the initial burden of proof to show by a preponderance of the evidence that the structure is a criminal nuisance property.
- (c) In any action brought to enforce the terms of section 62-62, evidence of a structure's general reputation and/or the reputation of persons residing in or frequenting it shall be admissible.
- (d) In establishing the amount of any civil penalty requested, the court may consider any of the following factors, as they may be appropriate, and shall cite those found applicable:
 - (1) The actions taken by the owner to mitigate or correct the problem at the structure;
 - (2) The financial condition of the owner;
 - (3) Whether the problem at the structure was repeated or continuous;
 - (4) The magnitude or gravity of the problem;
 - (5) The economic or financial benefit accruing or likely to accrue to the owner as a result of the conditions at the structure;
 - (6) The cooperativeness of the owner with the city;
 - (7) The cost to the city of investigating and correcting or attempting to correct the condition; and
 - (8) Any other factor deemed by the court to be relevant.
- (e) Relief to Innocent Owners – Affirmative Defense. It shall be an affirmative defense to Section 62-62, Criminal nuisance property prohibited, if the owner of the real property at issue:
 - (1) Did not have actual knowledge of the conduct constituting a criminal nuisance property, or notice of an act or circumstance creating the criminal nuisance property; and
 - (2) Upon learning of the conduct constituting a criminal nuisance property, took reasonable action to prohibit such use of the property; and
 - (3) Fully cooperated with all law enforcement agencies in any investigation and prosecution of the criminal acts relating to the criminal nuisance property; and
 - (4) Did not participate in the criminal acts.
- (f) The court may require a property owner whose property has been deemed criminal nuisance property to have the property inspected by city inspectors and Tri-County Health inspectors, where appropriate, at the owner's expense, for the presence of environmental hazards, prior to the structure being re-occupied.
 - (1) If the property is found to have environmental hazards, the owner will bear the expense to have the hazards remediated.

- (2) The owner will bear the expense of having a follow-up inspection by City inspectors and Tri-County Health inspectors to confirm the hazards have been remediated.
- (3) During the remediation process, the owner shall continue to provide for the maintenance, environmental clean-up, sanitation, utilities, insurance, and security of the property.

Section 7. That Section 62-66 of the city Code of the City of Aurora, Colorado, is hereby to read as follows:

Sec. 62-66. - Closure during pendency of action; emergency closures.

If under this division it is determined that the structure is an immediate threat to the public safety and welfare, the city may apply to the court for such immediate ex parte interim relief that is deemed by the chief of police or city attorney to be appropriate. In such an event, the notification procedures set forth in subsection 62-63(a) and the limitation of subsection 62-65(a) need not be complied with. The court shall order the forthwith service of the normal pleadings together with a copy of an emergency order authorizing temporary closure of the structure until such time as the defendant property owner petitions the court for reconsideration. The court shall hear such motions for reconsideration at the earliest possible time.

Section 8. That Section 62-67 of the city Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 62-67. - Relief from closure order.

- (a) An owner of a structure determined to be criminal nuisance property may obtain relief from the court's judgment if the owner:
 - (1) Appears and pays all costs associated with the proceedings under this division;
 - (2) Files a bond in such a place and on such form as the court may by order direct in an amount not less than the tax-assessed value of the structure and keeps the bond in force for a period of not less than one year or for such longer period as the court directs; and
 - (3) Enters into a stipulation with the city that the owner will immediately abate the conditions giving rise to the criminal nuisance property and prevent the conditions from being established or maintained thereafter. The stipulation will then be made part of the court's file.
- (b) If the owner violates the terms of the stipulation, the city may thereafter apply to the court for an order awarding up to the entire amount of the bond to the city as a penalty as well as such other relief, including closure for any additional period of up to one year, that is deemed by the court to be appropriate.

Section 9. That all ordinances, or parts of ordinances, of the city Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 10. That, pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this ordinance shall be by reference, utilizing the ordinance title.

INTRODUCED, READ, AND ORDERED PUBLISHED this 23rd day of
July, 2018.

PASSED AND ORDERED PUBLISHED BY REFERENCE this 27th day of
August, 2018.



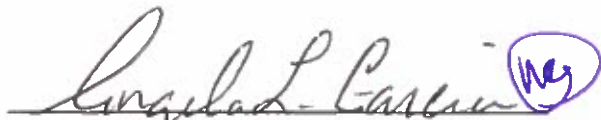
BOB LEGARE, Mayor

ATTEST:



MICHAEL LAWSON, Interim City Clerk

APPROVED AS TO FORM:



ANGELA L. GARCIA, Assistant City Attorney

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