

ORDINANCE NO. 5.68.3, Series of 2017

**TITLE: A BILL FOR AN ORDINANCE AMENDING CHAPTER 6.01 OF THE TOWN OF PARKER MUNICIPAL CODE CONCERNING CHRONIC NUISANCE PROPERTY**

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

**Section 1.** Chapter 6.01.020 of the Parker Municipal Code is hereby amended by the addition thereto of the following definitions:

**6.01.020 Construction of terms; definitions.**

\* \* \*

(2) Definitions.

*Abandoned property*, for purposes of defining a chronic nuisance, means a property over which the person in charge no longer asserts control due to death, incarceration, or any other reason, and which is either unsecured or subject to occupation by unauthorized individuals.

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

*Chronic nuisance property* means:

a property on which nuisance activity is observed on three (3) or more occasions during any sixty- (60-) day period or on which nuisance activity is observed on seven (7) or more occasions during any twelve- (12-) month period; or

a property where, pursuant to consent or a valid search warrant, evidence of drug-related activity has been identified; or

any abandoned property where nuisance activity exists.

*Drug-related activity* means any unlawful activity at a property which consists of the manufacture, cultivation, growth, production, delivery, sale, storage, possession, use or giving away of any controlled substance as defined in Sections 18-18-203 through 18-18-207 C.R.S., as the same may be amended from time to time. Possession of marijuana that is authorized under state law shall not result in an enforcement action under this ordinance.

*Landlord* means the owner, lessor or sublessor of the dwelling unit or the property of which it is a part and, in addition, means any person designated as a representative of the landlord.

*Person associated with a property* means any person who, on the occasion of a nuisance activity, has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit, a property or a person present on property, including, without limitation, any officer, director, customer, agent, employee, or any independent contractor of a property, or a person in charge of or owner of a property.

*Person in charge of a property* means any person in actual or constructive possession or control of a property, including, but not limited to, an owner, occupant, agent or property manager of a property under his control, and any bank or financial institution in actual or constructive possession or which possesses any sort of lien or interest in the property. There may be at any one time multiple persons in charge of a property all of which may be jointly and severally liable under this Chapter.

**Section 2.** Section 6.01.060 of the Parker Municipal Code is hereby amended by the addition thereto of a new subsection (3)a.14. to read as follows:

**6.01.060 Action to abate a public nuisance.**

Neighborhood Services may abate a public nuisance by any of the following procedures:

\* \* \*

(3) Abatement by criminal action/penalty assessment. If Neighborhood Services elects not to summarily abate the nuisance under Paragraph (1) above or file a civil suit to abate the nuisance under Paragraph (2) above, Neighborhood Services may initiate a criminal action in Municipal Court to have the nuisance declared as such by the Court and for an order enjoining the nuisance and authorizing its restraint, removal, termination or abatement, or, at its sole discretion, Neighborhood Services may utilize the penalty assessment procedures provided by Section 3.03.400 of this Code, while adhering to the fine schedules set forth in Subparagraph (3)d. below, which are based on the number of violations within a twelve-month period. No notice shall be necessary prior to the issuance of a summons and complaint under this Section.

a. The following nuisances, as defined by Article II of this Chapter, shall constitute criminal violations under this Code:

\* \* \*

14. Marijuana plants, pursuant to Section 6.01.320 of this Chapter.

**Section 3.** The Parker Municipal Code is hereby amended by the addition thereto of a Section 6.01.110 to read as follows:

**6.01.110 Chronic nuisance properties.**

**(a) Chronic nuisance notice.**

(1) When documentation confirms a chronic nuisance property, as defined by Paragraph 6.01.020(2) of this Chapter, Neighborhood Services or its designee shall notify the person in charge of the property in writing that the property is in danger of being declared a chronic nuisance property.

(2) The notice shall indicate the following:

a. the street address or a legal description sufficient for identification of the property;

b. a concise description of the nuisance activities that have occurred on the property and whether the property is abandoned;

c. a warning that the person in charge of the property may be subject to penalties as set forth in this Chapter;

d. a demand that the person in charge respond to Neighborhood Services or its designee within ten (10) days of service of the chronic nuisance notice to discuss the nuisance activities and create a plan to abate the nuisance;

e. a statement that the person in charge shall have an opportunity to abate the nuisance giving rise to the nuisance; and

f. a warning that, if the person in charge does not respond, as required, or if the matter is not voluntarily corrected to the satisfaction of Neighborhood Services or its designee, the Town may file an action to abate the property as a chronic nuisance property pursuant to this Chapter and/or take other action against the property or person in charge.

(3) Such notice shall be either:

a. personally served; or

b. delivered by first class mail to the person in charge of the property with a copy mailed to the owner at the address indicated by the Douglas County Assessor's Office, if different than the person in charge of the property.

(b) Requirement to respond. A person in charge who receives notice pursuant to this Section must, within ten (10) days, contact the Neighborhood

Services representative or designee who issued the notice to establish a plan of action to eliminate the conditions, behaviors or activities which constitute a nuisance at the property.

(c) Abatement agreement/approved plan to abate.

(1) The person in charge shall enter into an abatement agreement or otherwise produce a plan approved by Neighborhood Services or its designee to abate the nuisance within fifteen (15) days of the issuance of the chronic nuisance notice.

(2) The abatement agreement, or the approved plan to abate, shall be signed by the person in charge and shall include the following:

- a. the name and address of the persons in charge of the property;
- b. the street address or a description sufficient for identification of the property, building, structure, or land upon or within which the nuisance is occurring;
- c. a description of the nuisance activities and whether the property is abandoned; and
- d. the necessary corrective action to be taken, and a specific date or time by which correction must be completed.

(d) Corrective action.

(1) Once the person in charge has entered into an abatement agreement or otherwise produced an approved plan to abate the nuisance, he or she must abide by the approved plan and promptly take corrective action to eliminate the nuisance. Corrective action may include, but is not limited to:

- a. effective tenant screening, leasing and rule enforcement;
- b. implementing physical improvements for crime prevention;
- c. providing security for the property;
- d. evicting persons responsible for the nuisance activity; and
- e. pursuing other remedies available to the owner pursuant to any lease or other agreement.

(2) The Town of Parker shall offer services to persons in charge with known mental or physical disabilities in order to facilitate such persons taking all lawful and reasonable corrective action necessary to abate the nuisance.

(e) Commencement of abatement action – enforcement.

(1) In any action filed, the Town shall have the burden of showing, by a preponderance of the evidence, that the property is a chronic nuisance property. Police reports, official Town reports, and affidavits may be offered as evidence of chronic nuisance. The failure to prosecute an individual, or the fact no one has been convicted of a crime, is not a defense to a chronic nuisance action.

(2) Pursuant to Article XX, section 6 of the Colorado Constitution, Sections 1.2 and 8.1 of the Town of Parker Home Rule Charter, and Chapter 3.01 of this Code, the Municipal Court for the Town of Parker is granted the jurisdiction, duties and powers of this Chapter.

(3) Any action under this Chapter shall be commenced by the filing of a verified complaint and a motion for a temporary restraining order.

(4) Proceedings under this Chapter shall be governed by the Colorado Municipal Court Rules of Procedure.

(5) Upon the Town's action under this Chapter, the Town shall file and record with the clerk and recorder, a cease and desist order or notice of lis pendens, or both, against the real property owner involved to fully inform and protect the interests of any bona fide innocent third-party purchaser.

**Section 4.** The Parker Municipal Code is hereby amended by the addition thereto of Section 6.01.320 to read as follows:

6.01.320 Marijuana plants.

It shall be unlawful and deemed a nuisance for any person to grow, possess, or maintain more than six (6) marijuana plants on any lot within the Town that is not in compliance with Section 11.18.020 of this Code.

**Section 5. Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this ordinance was posted in two public places two days before the Town Council meeting as provided by Section 7.5e. of the Town of Parker Home Rule Charter.


**Section 6. Severability.** If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

**Section 7.** This Ordinance shall become effective ten (10) days after final publication.

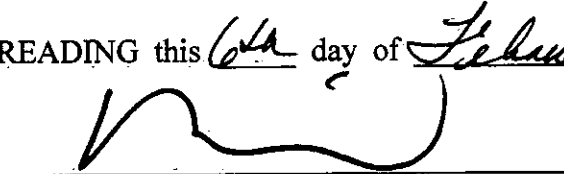
INTRODUCED AND PASSED ON FIRST READING this 17<sup>th</sup> day of January,  
2017.

  
Mike Waid, Mayor

ATTEST:

  
Carol Baumgartner, Town Clerk

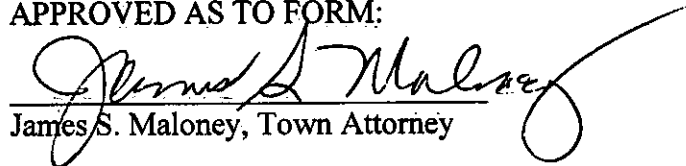
ADOPTED ON SECOND AND FINAL READING this 6<sup>th</sup> day of February,  
2017.

  
Mike Waid, Mayor

ATTEST:

  
Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

  
James S. Maloney, Town Attorney