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Tina Marquis

Ryan Schuchard

Nicole Speer

Mark Wallach

Tara Winer



Council Chambers

1777 Broadway

Boulder, CO 80302

April 25, 2024

6:00 PM

City Manager

Nuria Rivera-Vandermyde

City Attorney

Teresa Taylor Tate

City Clerk

Elesha Johnson

STUDY SESSION BOULDER CITY COUNCIL

Quality of Life and Chronic Nuisance Update Overview

90 min - 30
min staff
presentation/60
min Council
discussion

Zoning for Affordable Housing Phase II

90 min - 30
min staff
presentation/60
min Council
discussion

3:00 hrs

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COVER SHEET

MEETING DATE

April 25, 2024

AGENDA ITEM

Quality of Life and Chronic Nuisance Update Overview

PRIMARY STAFF CONTACT

Brad Mueller, Director of P&DS

ATTACHMENTS:

Description

- ▣ **Item 1 - Quality of Life Overview/Chronic Nuisance**



STUDY SESSION MEMORANDUM

TO: Mayor and Members of Council

FROM: Nuria Rivera-Vandermyde, City Manager
Teresa Taylor Tate, City Attorney
Brad Mueller, Director of Planning & Development Services Dept.
Laurel Witt, Assistant City Attorney II
Rewa Ward, Paralegal II
Christopher Reynolds, Deputy City Attorney, Prosecution
DeShawna Zazueta, Assistant City Attorney II
Elizabeth Crowe, Deputy Director, Housing and Human Services
Brenda Ritenour, Neighborhood Services and Engagement Manager
Tony Spencer, Senior IT Business Analyst
Stephen Redfearn, Police Chief
Ron Gosage, Deputy Police Chief
Barry Hartkopp, Deputy Police Chief
Darren Fladung, Police Commander
Jen Riley, Code Enforcement Manager
David Lowrey, Fire Marshal
Kevin Bennett, Contractor and Rental Licensing Manager
Jenn Ross, Code Compliance Manager
Carin Armstrong, Community Resolution Manager
Amanda Nagl, Unlocking Government Consulting

DATE: April 25, 2024

SUBJECT: Quality of Life and Chronic Nuisance Update Overview

EXECUTIVE SUMMARY

The City of Boulder has regulations that impact the quality of life and public safety. The city hosts programs, processes and services that support the living conditions of tenants, residents, and visitors, while also supporting the rights and responsibilities of property owners, businesses, and the general public. Over several years, public frustration grew as the severity and repetitive nature of nuisance violations increased. These were compounded by impacts from COVID-19 and the resulting restrictions, until in 2021 community members expressed concerns to city council about the livability conditions in residences and neighborhoods due in part to some more visible incidents in the city. In 2021, City Council asked that the city look across codes, associated programs, processes, and strategies to determine what areas could be improved, such

as code changes, program development, and process changes. The result was a series of “quality-of-life projects.”

This Memorandum provides an update on those quality of life projects collectively and focuses on in-depth information related to one of the remaining projects, chronic nuisance. The creation of chronic nuisance rules includes a proposed re-write of the [Abatement of Public Nuisances ordinance](#) and minor revisions to associated ordinances regarding rental licenses and occupancy. The overall program will support continuous collaboration and work across departments, with the intent of providing consistent, equitable, and effective accountability for the small number of the most egregious, chronic violating properties (ownership and rental) in the city. Effective management will include a variety of support resources, community partnerships, and enforcement.

A [Public Nuisance Ordinance Update webpage](#) includes information such as the proposed ordinance, an annotated version of the current ordinance highlighting changes, and a Frequently Asked Questions reference. (Several of these elements are included as attachments.)

KEY QUESTIONS

This study session item is mostly informational. However, some questions for consideration include the following:

1. Does City Council have any questions or feedback about various quality of life program elements throughout the city?
2. Does City Council have any questions regarding the chronic nuisance project?
3. Does City Council have any questions about the supporting historic and peer data?
4. Are there other matters for staff consideration in advance of bringing the proposed ordinance to council?

KEY ISSUES & GOALS

- *Result of council directive.* The re-write of the [Abatement of Public Nuisances](#) ordinance and creation of chronic nuisance as a designation for properties reaching a specific threshold of violations is at the directive of City Council. A “Nod of Five” was made in March 2021 to explore options for quality of life projects, and a chronic nuisance update was confirmed at the July 28, 2022, City Council study session as one of those projects.
- *Current code is arguably inequitable and ineffective.* The current code defines public nuisance in a way that does not make it useful for either singular incidents or properties with multiple violations. It is vague and creates a timeline and process that is not suitable for enforcement or landlord accountability. This proposed re-write provides clear definitions for both public nuisances and chronic nuisances, while offering new remedies that are administrative (including through restorative justice), civil, and criminal

alternatives. The re-write also creates an escalating fine schedule and abatement recovery option. The settlement conference in its old form has been removed, though similar alternative processes will continue to be utilized for singular violations.

- *Chronic nuisance impacts a small number of properties.* The chronic nuisance tool will only apply to the most egregious offenders in the city. It was developed by reviewing the number of violations for the historically worst offenders representing the top two percent of properties. From that, the dwelling unit numbers and numbers of violations among this population were analyzed to determine the most fair and equitable set of categories. Staff estimate that 20 properties or less a year will actually qualify as “chronic nuisance” candidates, and of those, all would first be given the opportunity for compliance through an abatement agreement.
- *Philosophical intent.* A Values & Intentions document guiding development of the chronic nuisance ordinance update is found as **Attachment A**.

BACKGROUND

Complaints related to perceived problem properties have simmered in the background of neighborhood dialogue for decades across the city. It is important to note that these properties are both owner-occupied and rentals. Many of these properties came to the forefront of awareness during the COVID-19 pandemic, potentially because more people spent additional time at home and had observed recurring violations of city codes. In consultation with council and community, staff began to look at new ways to prioritize quality of life matters and address problem properties.

The concept of a re-tooled ordinance targeted at properties with severely repeated violations of city property and use codes became a focused discussion within the standing Hill Revitalization Working Group (HRWG), as that group worked to itemize recommendations for quality of life improvements to the city. Those discussions were taken, in summary format, to the City of Boulder Quality of Life Project Work Team in 2021, and this proposed ordinance, as well as the project work associated with it, became a part of the council-backed work plan in 2022 to address quality of life issues in the coming years.

The HRWG was first formed in 2015 through the city’s Community Vitality Department with the initial intent of providing a mechanism for sustained stakeholder engagement to guide the refinement and implementation of the Hill Reinvestment Strategy (HRS). The HRS was intended to identify funding and governance mechanisms for ongoing improvements in the neighborhood. In 2017, members of the HRWG determined that implementing the quality of life improvements in the University Hill Neighborhood and commercial district respectively would benefit by having two distinct working groups: a Hill Reinvestment Neighborhood Working Group (HRWG-N) and a Hill Reinvestment Commercial Working Group (HRWG-C). The HRWG-C has since disbanded, and the neighborhood group continues as the current HRWG.

The HRWG-N subsequently expanded its focus to become a regular mechanism for communication between various stakeholders, including the city, as well as to additionally consider the reduction of nuisance behaviors and issues creating quality of life concerns in the neighborhood. Interest grew particularly after a March 2021 major disturbance in the University Hill Neighborhood that resulted in property damage and personal injury. However, chronic nuisance challenges are not limited to the Hill; data shows that historically nuisance violations are throughout the city. In addition, city attorneys advised that any modifications to the ordinance should apply to the whole city.

Following the unanimous request of City Council on March 16, 2021, and, with the support of the HRWG, the City of Boulder Quality of Life Project Work Team was formed in 2021. This team, initially comprised of Nuria Rivera-Vandermyde, City Manager; Sandra Llanes, Deputy City Attorney; Laurel Witt, Assistant City Attorney; Rewa Ward, Paralegal; David Gehr, Interim P&DS Director; Jonathan Bergelin, P&DS Code Compliance Supervisor; Maris Herold, Police Chief; Brenda Ritenour, Neighborhood Engagement and Services Manager; and Richard Todd, IT Data and Analytics Sr. Manager, then created the Quality of Life Project Plan, adopted by council in July 2022.

A Values & Intentions Statement regarding the philosophical approach to the project is found as Attachment A.

ANALYSIS

There will always exist a tension between holding property owners accountable for dangerous and nuisance conditions on their property and ensuring adequate time, compassion, and consideration for compliance. Similarly, there is always a tension between the conditions on an individual property and the impacts on the surrounding neighborhood properties.

The proposed re-write for the group of nuisance regulations is designed to better define the differences between a public nuisance and chronic nuisance. The re-write provides clarity and a standardized approach that will ensure properties are evaluated equitably. It will ensure that the basic functions of safety and well-being are upheld, for the benefits of occupants, property owners, and the surrounding neighborhood.

The proposed ordinance and overall quality of life initiative are not seen as in conflict with the city's housing goals, but are rather complementary. A major consideration throughout has been to balance community feedback with the project goals, in many different ways.

Staff consulted and utilized the city's Racial Equity Instrument (REI) throughout the project, as a guide for strategic community engagement plans. It was utilized by the core team beginning in March 2023 for conceptual planning related to community engagement and a full workshop was held in June 2023. Early feedback received from Boulder Housing Partners and others prompted an additional workshop in November for city staff to utilize the REI for a deeper evaluation of the proposed ordinance and its potential impacts. Discussion regarding benefits/burdens and

potential unintended consequences for Boulder’s most vulnerable populations continue to evolve, and the working group remains in dialogue with partners and owners/mangers at various properties, including those with a history of the highest number of violations.

Through the REI, staff identified several key issues which have become driving factors in the engagement plan, as well as in the development of the proposed ordinance itself. Some observations include the following:

- While there are locations in University Hill that appear on the most egregious/highest number of violations list, this is not a “Hill problem.” Rather, there are chronic nuisance situations occurring throughout the city.
- Some of the neighborhoods with the highest number of violations are also home to a higher number of people experiencing systemic socio-economic barriers. This suggests the need for a thorough and careful equity-based approach with resource navigation and support before properties are designated chronic.
- Some of the locations with the highest number of violations also have ongoing management issues or are already involved with the city’s mediation program. This staff team does not want to impede any good problem-solving work already in place; for that reason, those locations are being approached uniquely and individually through the staff resources already allocated.
- On-going individual meetings are planned with housing partner agencies to address the impacts of the ordinance update and to gain additional understanding related to any unintended consequences.

CITYWIDE QUALITY OF LIFE PROJECTS

In June 2022, city staff presented a plan with short, medium and long-term objectives to improve quality of life and reduce nuisance issues. A joint presentation was provided by city and university staff on July 28, 2022, to update City Council on the progress of work plans from both organizations. Below is a summary of the current status of those projects:

Completed Short-Term Projects:

- **Data Study (Phase I and II).** Phase I: A 90-day study was completed to provide analysis of then-current nuisance activity, bringing heightened awareness of current conditions to both university and City of Boulder staff. It was shared with both organizations, community members and the HRWG for reflection and further analysis.
Phase II: A more thorough analysis was completed for the years 2019-2022. This data would become the basis for decision-making, further analysis and shared understanding of nuisance issues across the city.
- **Joint Data Position of Boulder Police and University of Colorado Police.** A new data use agreement was put into place and a new shared Business Intelligence Analyst position was hired in June 2022 to share data and analysis to work toward shared solutions.
- **[Noise Ordinance Revisions.](#)** Adopted September 1, 2022, this ordinance established that 200 feet from a property line is a reasonable enforcement standard for daytime noise and

provided officers increased ability to shut down a nuisance party by ordering individuals to disperse and creating a separate violation for failure to obey that order.

- Neighborhood (University Hill) Safety Walks. Multiple walks were organized through University Hill Neighborhood Association, city staff, City Council and university personnel in 2022 and 2023.
- Weeds and Trash [Ordinance Revisions](#). Adopted February 16, 2023; this ordinance created a civil citation process allowing for posting on a residence, rather than serving in-person, and established a fine escalation schedule for weed and trash violations.
- Notification (Calls for Service) System for Landlords. An [email system](#) was launched in July 2023 to alert owners, agents and applicants from rental license registration when a call for service from police or fire occurs on a rental property; there is also a [public dashboard](#). An update is currently being scoped for additional specificity in multi-unit developments; future upgrades are contemplated to include code compliance and code enforcement activity at the property.
- Tenant Resource Guide. To support the interests of tenants, and to communicate available resources to them, [a tenant resource guide](#) was distributed, in both English and Spanish. A physical copy was mailed to all rental license addresses (tenants), and an electronic copy was sent to all emails related to rental licenses (landlords). Display is encouraged in all rental properties throughout the city. A program of continued outreach and education is planned.
- Neighborhood (University Hill) Clean Up. Although envisioned as new, action ultimately was in conjunction with other, ongoing clean-up efforts already in place.

Ongoing (Medium-Long Range) Projects:

- Landlord Education (ongoing) -- City staff want to ensure that all landlords have access to information about best practices, local/state/federal regulations, and resources/programs for assistance. The city's first landlord education classes were held in September and November 2023. These will continue regularly, and the April 18, 2024, session will be recorded and made available in an on-demand format via the city's webpage for [Landlord, Tenant and Roommate Resources](#).

Pending Longer-Term Projects Underway:

- Chronic Nuisance. A proposed ordinance revision (discussed below) is part of a comprehensive set of projects and programmatic development designed to change the way a limited number of properties, defined by a set number of violations, are analyzed and managed in the city.
- Rental License Enhancements. Strengthening the city's ability to manage rental licenses more effectively in the city and provide more oversight to the building conditions and tenant behaviors at Boulder's rental properties.
- Review of Code Compliance Operations. Staff are currently reviewing the organizational structure that supports outreach, education, and compliance. Revisions to city systems may be appropriate in order to most successfully do this work.
- Additional Data Projects. A more focused enforcement tool will support this work. IT is currently in the scoping phase of its development with the Core Chronic Nuisance Team, led by the Planning and Development Services Director and Code Compliance Manager.

Quality of life projects with a direct impact have been identified below as a part of the programmatic approach to Chronic Nuisance (see diagram below). A detailed update of all quality of life projects adopted by council since 2022 is available as **Attachment B**.

A Programmatic Approach to Chronic Nuisance

Several of the quality of life projects have paved the way for the current work within chronic nuisance and the associated proposed ordinance. (See **Attachment C**.) This effort is a data-driven programmatic approach to chronic nuisance, with attention to providing awareness and education as critical components to gain voluntary compliance throughout the community. It is consistent with the city's historic philosophical approach of seeking compliance, versus being punitive. As such, the proposed ordinance itself is only one tool in promoting and enforcing community standards for health, safety and welfare, and only relevant for ownership or rental property owners who have been consistently resistant to address prior violations.

Additional Activities

The Core Chronic Nuisance Team was created in the last quarter of 2022, meeting bi-weekly since January 2023. In addition to the quality of life projects, data analysis and a series of studies has led their continued exploration, analysis, reflection and creation of recommendations to council. Community engagement and questions from community partners have prompted several iterations of these internal processes.

Comparison City Research

Comparison city research was conducted by the City Attorney's Office and the Unlocking Government consultant. Findings were shared with the core team and serve as a reference when questions are presented. In Colorado, Fort Collins, Parker and Aurora were studied. Other cities studied were Kansas City (MO), Madison (WI), Minneapolis (MN), Portland (OR), Seattle (WA), Spokane (WA), Springfield (IL), and Berkely (CA). (See **Attachment D**.)

Peer communities were surveyed on wide range of questions, such the following samples:

- What is the number of contacts in a period required before triggering the ordinance?
- What is the required response from notice recipient?
- Are there exclusions for domestic violence and other victim-based crimes?
- What occurs when there is a failure to respond to notice?
- What is the administrative process before the court process?
- What is a courts involvement?
- What remedies exist?

Administrative Review and Actions

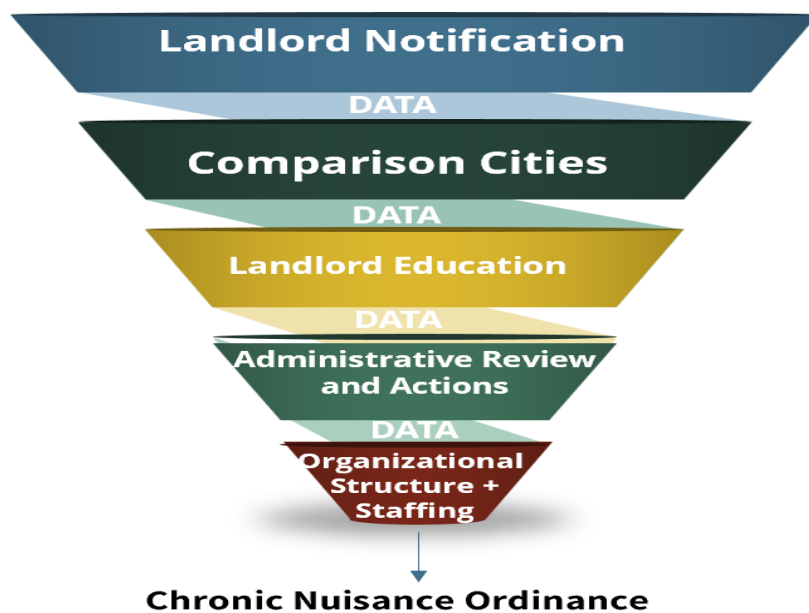
Any existing ordinances and permissions currently available to the city manager were reviewed by the city's legal team to determine whether any intermediate actions could be taken to address immediate conditions. During this review in 2023, staff determined that administrative options were significantly limited under the current code. As a result, noise and weed/trash ordinance changes were brought forward first. Given that public nuisance/chronic nuisance changes were

more complicated and also required additional engagement, a longer project plan was developed to re-write the ordinance and is now being brought forward.

Continuous Data Use and Analysis

Data analysis led this project as both a stand-alone effort and as a continuous feedback loop for decision-making. The first task to understand the nature of chronic nuisance properties (ownership and rental) in the city was to geocode and analyze property data across several city systems. Historically, violation data was siloed by data sets related to various programs, and the resulting data was ineffective in addressing chronic nuisance, a limitation of meaningfully administering such related codes. This effort required overcoming complicated internal information-sharing and development of various tools. With this work, the city has a mechanism to efficiently look across systems, codes and departments to see a complete picture of a property as it relates to all city code violations -- code compliance, code enforcement, and police reports/citations.

Despite the advances provided by these abilities, it is important to recognize that, like the data sources that support them, any tools will only function as a starting point to the administrative enforcement process. It is the system that will notify staff of an increasing number of violations at a property, which will then prompt further investigation and a careful and individualized determination regarding the nuisance status of a property.



CHRONIC NUISANCE ORDINANCE REVISION

Why does the abatement ordinance need changes?

The nature of the city's current Abatement of Public Nuisance Ordinance prohibits an effective, timely, or sustainable system for dealing with what become "problem properties" due to a high number of violations, across the city's regulatory agencies. (See **Attachment E** for an annotated version of the current ordinance.) Even though they represent a small number of properties (estimated at 20 or less per year), field staff report of the challenges and frustrations in dealing with severe "problem properties" citywide and a lack of escalating alternatives for accountability. Community complaints, confirmed by city officials, frequently culminate in only single-violation level responses, as there is not currently an effective mechanism to hold properties accountable for multiple accumulated violations of different types.

Consequently, a property may continually receive nuisance violations and ultimately become a detriment for its occupants and neighbors, having far-reaching, enduring, and negative impacts that are both personal and have property value consequences for the neighborhood. As a result, the current ordinance has been used infrequently and ineffectively.

City staff, working groups, and the public have noted the following:

- The current ordinance is hard to enforce, resource intensive to administer, and too vague.
- The current process takes months or years to conclude.
- The current code identifies a "public nuisance" at two violations but does nothing to establish an escalation in fines, accountability, or remedies for those that offend at significantly higher rates.
- The current code is inequitable and can result in inconsistent enforcement. The number for chronic nuisance should instead be data-driven to target only the most egregious situations and true chronic nuisance properties.
- For singular public nuisance violations that present an immediate threat to public safety, peace officers are more effective using a reliable and flexible tool.
- In 2020-2021, the city made prosecution of public nuisance cases a priority, particularly in cases related to public health ordinances, and still only two cases were able to be brought to fruition. The current process is extremely cumbersome on resources and staff time, while also ineffective.
- The current settlement conference model is well-intended (i.e., "develop a management plan with all impacted parties"), but these types of alternative processes are better handled earlier, when individual violations occur. Once issues have become chronic, and owners have already repeatedly not shown good faith in working toward compliance with the code, then they should be handled in an alternative manner.
- Impacted neighbors should not have to play a role in the abatement process, as they sometimes do now; this further victimizes those impacted by "problem properties."
- Property owners who fail to comply or respond, and who then utilize significant city resources, and, in general, refuse to work with the city to come into compliance, should be held to more accountability once the violations are deemed chronic.
- Repetitive use of city resources, and failure to comply with abatement requests should carry a high level of accountability in the community.

- There are limited instances where there have been continued community complaints about repeat issues at specific addresses that do not get solved through traditional means.
- With increased occupancy allowances and zoning changes to encourage additional housing, there is a rising community interest in enforcement of property-related codes and clear accountability for violators.
- Tools to increase accountability among problem properties should not come at the expense of city goals to create more affordable housing, permanently supportive housing, and decrease homelessness.

Definition of Public Nuisance

Following the March 2021 disturbance in the University Hill Neighborhood, a full review of police action and review of related ordinances was conducted. Much of that effort evolved into the larger quality of life project, and it was determined that a clear definition was missing regarding existing singular violations.

The current definition of “public nuisance” includes two or more violations, presumed to be an earlier effort to identify properties with repeated violations, though it is set too low to be equitable or meaningful for enforcement. At the same time, it does not clearly address situations where there is a single egregious violation that presents an immediate danger to public safety (e.g., a collapsing stairwell). While chronic nuisance is being proposed as an alternative for repeat violations, the public nuisance definition has been refined for use in a singular event.

Public nuisance means any act or omission that constitutes a violation of the Boulder Revised Code 1981, public health order, or state criminal law with the exceptions of traffic offenses, situations in which the resident of a parcel is a crime victim, false reports, or false alarms. Public nuisance can occur at either residential or commercial properties, and there must be an unreasonable risk of harm or a situation that would unreasonably injure, damage, annoy, inconvenience or disturb the peace of a member of the public.

The proposed ordinance reduces the public nuisance designation from two to one violation to allow for greater clarity on the application of this ordinance in dangerous situations. This designation is intended for only egregious acts otherwise not covered, and to facilitate the defining of chronic nuisances. It is important to note that owners, tenants, and property managers may self-report such violations and would be protected from charges under this ordinance if self-reported. City administration and the court would have access to the same set of remedies for a public nuisance as for chronic nuisance, detailed below.

Definition of Chronic Nuisance

The current chronic nuisance project focuses on residential properties only. Commercial properties could be considered in the future with an ordinance revision, but the community need and ability to adequately staff enforcement has been focused on residential (ownership-occupied and landlord-owned). The team focused on three key areas to inform the development of a chronic nuisance ordinance for Boulder: (1) the number of violations used to determine “chronic” (and thus a threshold for the consideration of action by the city); (2) types of

qualifying violations to be included (excluding, for example, crimes against victims); and, (3) remedies and pathways viable for consideration.

Number of Violations

Thresholds to define “chronic” are based on the historic top two percent violator properties across the city, grouped based on the number of dwelling units on a property. The number of groupings was then determined by the most even distribution of property numbers within the grouping, while balancing a need for operational simplicity. This approach is consistent with that of other cities reviewed.

Four groupings are based on unit count to provide the balance between equitable distribution and practical administration of the ordinance. Chronic nuisance property means: (1) A parcel with a single dwelling unit where five (5) or more public nuisances have occurred within one calendar year; or (2) A parcel with two dwelling units where seven (7) or more public nuisances have occurred within one calendar year; or (3) A parcel with three to nine dwelling units where seven (7) or more public nuisances have occurred within one calendar year; or (4) A parcel with ten or more dwelling units where twenty-three (23) or more public nuisances have occurred within one calendar year.

Earlier drafts of the ordinance re-write proposed three groupings. An additional grouping was added based on community partner input and concerns that larger units would be over-represented.

Type of Violations Included or Excluded

The core team defined which types of violation/incidents qualify as nuisance conditions and which do not. Only verified and cited violations qualify (as opposed to calls for service, complaints, warnings, etc.). Multiple studies were completed to better determine the mix of different types of nuisances and their prevalence across the city, by subcommunity, over time. All relevant departments spent several rounds of review to determine which “qualifying” violations should be included, specific to its own jurisdiction. The project work team then conducted secondary and tertiary review processes to review interactions across departments. Matters such as community and neighbor impacts were considered, as well as the types of violations that are indicative of more substantive and ongoing impacts. Data analysis provided the numbers of incidents per year and ranking of incidents for prevalence.

Ultimately, the group included a broad set of violations associated with general code enforcement and policing, with the following key types excepted: crimes of a sexual nature, child abuse, kidnapping, domestic violence, and other individual crimes against persons, or those involving a commercial or business element (such as drug trafficking). Vehicular and traffic violations are also excluded.

Code Compliance (administered by P&DS) and Fire Code violations (administered by the Fire Department) were examined and those that are included represent public safety concerns and accountability toward property owners in rental and ownership situations, as well as in multi-unit, multi-ownership situations.

Due to the nature of code enforcement violations (administered by the Code Enforcement Unit within the Police Department), all of these violation types are included, since they carry a high impact on neighboring properties by their very nature of being exterior and already explicitly classified as nuisances (weeds, trash, snow, etc.).

Remedies and Pathways

Chronic nuisance violators will have already accumulated individual violations, which will have been cited, addressed and assigned consequences according to the associated law, including fines, abatement of conditions, restorative justice actions, and more. The remedies required once a property reaches a threshold of being a “chronic” violator are therefore in addition and above and beyond those for the individual violations. As stated above, these remedies are for that small group of properties that have been persistently unresponsive to other penalties and consequences.

The proposed ordinance allows for as many remedy options as possible, with administrative, civil and criminal pathways, as well as injunctive relief. This range of remedy options is an acknowledgement that the nature and severity of violations will vary greatly. Both rental license revocation and reduced term rental licenses have been added as remedy options for the very most aggregates of situations. Property owners can use the following processes to present evidence to mitigate (lessen) consequences.

- *Administrative Remedies*

Administrative remedies have been added to the proposed ordinance and apply to both public and chronic nuisance situations. The cost of abating any nuisance that is done by the city has been added, like the manner in which snow removal is currently done. This is intended to provide quick relief to impacted neighbors. After notice, and an opportunity for a quasi-judicial hearing, civil penalties can be issued per an escalating fine schedule: \$250 for the first infraction; \$500 for the second; \$1,000 for the third and \$2,000 for the fourth. The ability to revoke a rental license has also been added.

- *Civil Remedies*

The civil process for either public or chronic nuisance is a special statutory proceeding before the municipal court, without a jury. The standard is a preponderance of evidence, and the case can be brought against the owner, tenant, manager/agent or others contributing to the violation(s). A notice is required to be posted 10 days prior to action (for chronic nuisance cases, this is when an abatement agreement would be offered) and then the court can implement injunctive orders (cease and desist); or issue fines of \$100-\$1000 depending on the action/inaction of the owner, magnitude of violation and costs incurred by the city; and/or recoup attorney’s fees.

- *Criminal Remedies*

This process and associated remedies remain primarily the same, though both chronic nuisance and public nuisance scenarios are now included. This remedy option is a proceeding

before the municipal court, with the potential for a jury trial. Each day's failure to comply with a notice of abatement is a separate offense and prosecutable and punishable as a separate offense. Violations are subject to the penalties of Section 5-2-4, "General Penalties," B.R.C. 1981. The legal burden of proof for prosecution is "beyond a reasonable doubt." Only the most egregious cases would be considered for criminal prosecution.

- *Alternative Abatement Process*

Warnings are almost always provided prior to notices or citations, except for clear life-safety violations. Notice for an order to abate is 24 hours to 7 days (longer potentially based on situation and officer discretion). After the time passes, the officer can either issue a ticket for failure to abate or hire a third party to abate and charge the owner the cost, plus interest if unpaid. The ability to abate and recoup costs by the city is possible now through court processes for public nuisance violations.

- *Alternative Remedies*

Many single nuisance violations would have already been given options for restorative justice or mediation, through the municipal court, if the parties involved were amenable and met specific requirements. "Alternative remedies," such as restorative justice or mediation, may be possible for chronic or public nuisance as part of a court order for situations in which the judge determines those processes to be potentially helpful to the parties involved.

Off-Ramp for Chronic Nuisance Properties: Abatement Agreement

An offending party will have an opportunity to create an abatement agreement with the city. Completion of an abatement agreement will provide an off-ramp to further prosecution for chronic nuisance properties. A notice is required to be posted on the property when the threshold for chronic nuisance is met and verified. At that time, the property owner can respond within 10 days with an abatement plan. Such an agreement will be as unique as to the violations and individuals involved but may include such items as:

- Establishing tenant screening, leasing, and rule enforcement.
- Implementing physical improvements for crime prevention (e.g., lighting).
- Providing security for the property.
- Pursuing other remedies available under any lease or other agreement applicable to the property.
- Promptly reporting nuisance activities to law enforcement.
- Regular cleaning, maintenance, and repair of the properties and buildings located on it.
- To avoid further prosecution, the offending party will need to implement the abatement agreement once it is approved by the city.

Additional Modifications to Ordinance and Associated Revisions to Other Ordinances

To make the changes identified, the Rental License code is proposed to be modified. The ability to reduce rental license terms and to remove them in extreme circumstances already exists within the court system. This change is to add these options as administrative remedies, under the

circumstances of either public or chronic nuisance violations. These include the following proposals:

- 10-3-4, B.R.C. 1981, providing reduced term rental license for violations.
- 10-3-16, B.R.C. 1981, permitting removal of rental license, only to be used in extreme circumstances
- 10-3-20, B.R.C. 1981, adding reconsideration for occupancy due to administrative confusion of current ordinance.

ENGAGEMENT & FEEDBACK

Because the proposed chronic nuisance ordinance responds to a pattern of violations, the vast majority of community members will not be impacted by these changes. Rather than engaging broadly, staff took a strategic approach to community engagement. Those likely to be impacted by the proposed ordinance were given priority: top historic potential violators, tenants, landlords, students and housing partners.

Top Historic Potential Violators

The project team reached out to property owners and rental license holders of the hundred addresses with the highest number of historical violations. These property owners were provided the opportunity for a private meeting with members of the project team to inform about their unique perspective and to get feedback about what might support future compliance actions. The team also sent specific questions by email. Overall response was minimal, leading to conversations and emails with a handful of people.

Tenants

Members of the core team worked with Housing and Human Services staff, including Eviction Prevention and Rental Assistance Services program staff who support the city's Tenant Advisory Committee. Core team staff made several presentations to the Tenant Advisory Committee, and received committee input.

The project team prioritized the need to hear from tenants throughout the design of this proposed ordinance. However, staff recognizes that it is difficult for tenants to feel safe discussing landlord concerns and building issues given different power dynamics in landlord-tenant relationships. The work group looked to our other listed conversations (Tenant Advisory Committee, student groups, Community Connectors in Residence) to provide this perspective.

Boulder Area Rental housing Association (BARHA)

As a member of the HRWG, the Boulder Area Rental Housing Association has been aware of the chronic nuisance project since its earliest conception. BARHA staff have been highly engaged throughout several ordinance iterations. A presentation to the BARHA Board of Directors was provided, and staff have shared multiple versions of reviews and recommendations for improvements to the proposed ordinance.

Students

Through the city's partnership with the University of Colorado's Office of Student Affairs and the Office of Off-Campus Housing and Neighborhood Relations, the team has engaged with the Dean's Leadership and Values committee, Student Government, and CU Fraternity and Sorority Life. Members of the Core Team provided an overview of the proposed ordinance to the independent Interfraternity Council.

Housing Partners

Members of the project team have met with Boulder Housing Partners and the Boulder Shelter for the Homeless; discussions ranged from informal overviews to presentations on specific elements of the proposed ordinance. A presentation about the proposed ordinance is planned for this audience at a Chamber of Commerce-sponsored meeting on April 11, 2024. The Boulder Shelter for the Homeless, and shelters as a land use type, are not subject to this proposed ordinance.

Community Connectors in Residence

Members of the Core Team visited the Community Connectors in Residence for their counsel in completing the Racial Equity Instrument.

Key Takeaways from Engagement Discussions

- There is a tension around enforcing, within a single ordinance, patterns of violations that involve life safety codes (such as building/fire violations) and those that are behavior-focused (such as noise.) For city partners who house vulnerable and difficult-to-house populations, this was flagged. Similar concerns were voiced from students, the Tenant Advisory Committee, and market-rate landlords.
- Groups expressed a concern about the unintended consequences of reduced housing opportunities for populations who may be perceived as likely to be involved in behavior-focused violations.
- Participants in discussions expressed a desire to understand the investigation process and how it will be applied to reflect the situation occurring on a specific property before it is charged with chronic nuisance.
- A tension was noted between whole property versus dwelling unit violations and the impact or inability of the landlord to affect enough control over an individual unit to control potentially chronic behavior.
- Discussion was held regarding potential stigmatization in the designation of properties as a chronic nuisance, and the reputation of properties as well as the owners (landlords) of those properties.
- There are concerns about penalty fines being passed down to tenants, even if they are not responsible for the violations.
- Students are particularly interested in landlord trainings and incentives for property owners/managers to increase onsite interaction, and for clear expectation-setting at their rental properties. Students and student advocates anticipate in particular the building safety benefits of the updated ordinance.
- There were concerns about the school calendar and the count toward chronic nuisance, given student turnover.

- There are concerns that cultural practices could lead to repeated violations (ex. large families hosting quincineras for children close in age).
- There is a need for access to free or affordable community spaces where celebrations and gatherings can be held to keep them from becoming a nuisance violation.
- Biased use of the law by neighbors and law enforcement is a concern.
- Concerns that this will have the unintended consequence of fracturing relationships between tenants and landlords instead of strengthening.

Responses to Engagement Feedback

Engagement Feedback Summary	Staff Response Summary
Concern/tension related to addressing issues at a whole property versus dwelling units.	The overarching philosophy of this project is to only hold accountable only the most egregious of violations properties. Recognizing violations by property versus unit allow patterns of negligent management to be tracked and addressed beyond tenant misconduct alone.
Concern about unintended consequences making supportive housing or housing populations with greater mental health and/or substance abuse needs more difficult.	The current ordinance leaves room for inequitable treatment of properties because all properties are subject to the same schedule of consequences. The proposed ordinance provides for significant opportunity to collaborate with the city and avoid any further process. This allows engaged landlords to continue to help meet our goals of housing without compromising tenant and community safety.
Concerns about stigmatizing landlords with a designation of chronic nuisance.	Again, the proposed ordinance provides for much opportunity to be actively engaged in abatement as a landlord, including self-reporting violations and working collaboratively in response to single violations. These types of actions provide opportunities prior to and to mitigate against reaching the threshold to be designated chronic nuisance.
Concerns related to potential bias in application to landlords and/or tenants.	Chronic or public nuisance can only derive from verified violations by police, code enforcement, and code compliance. Landlords cannot initiate an investigation on their own. As for other potential bias, the city is deeply committed to the equitable application of the law, including sensitivity around cultural practices.

Interest in landlord training in the safety benefits of the new ordinance, particularly amongst student housing.	If the proposed ordinance is adopted, the city is committed to outreach and training to ensure that the new regulations are understood and socialized amongst Boulder property owners through regular outreach sessions and other avenues of communication.
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NEXT STEPS

Council input will be incorporated in preparation to bring the public nuisance/chronic nuisance ordinance update forward. The estimated timing for this is late May/early June, depending on the nature of council's suggested changes, if any.

A robust community education plan will be put into place prior to implementation of the ordinance, if adopted. Because the proposed ordinance is based on a year's accumulation of violations, relevant implementation will be phased out. This timeframe will allow for the completion of the administrative and investigative processes implicated by the ordinance to be put into place. The city will work with its community partners to provide accurate and thorough information on the education plan and subsequent enforcement of the ordinance.

ATTACHMENTS

Attachment A	Values and Intentions
Attachment B	Quality of Life Projects Overview
Attachment C	Draft Ordinance (Proposed)
Attachment D	Peer City Comparison Data
Attachment E	Current Ordinance, with Annotations of Change

Values and Intentions Related to “Abatement of Public Nuisance” Ordinance Revision

Why the Public Nuisance Abatement Ordinance is Being Revised:

- a large shift in housing stock to being a predominantly rental community
- repetitive actions of enforcement agencies at the same few locations (wastes already limited resources)
- a need to hold negligent landlords accountable with escalating penalties
- staff frustration and the inability to make the current ordinance work without considerable effort
- create the basis for an envisioned stronger role for rental licensing
- look at the potential connection between police activity and building safety differently/more thoroughly, effectively and equitably
- more recently: council looking to this as assist in neighborhood livability concerns associated with the increased occupancy allowances

Values/Intentions:

- Public Safety
- Collaboration
- Equity and fairness
- Creativity
- Solution-oriented mindset
- De-escalation of tense neighbor-neighbor impacts and interactions
- Increased livability conditions for residents and neighbors
- Accountability for disengaged/non-responsive landlords
- Data-driven approach to ordinance development and, following adoption, its administration

Intended Outcomes:

- **Hold property owners accountable for achieving compliance.** In situations where property owners are responsible, they will be held accountable for both public and chronic violations. Property owners are both of owner-occupied and rental properties.
- **Maintain or improve residents’ lives.** This includes easing resident and neighbor stress and frustration, as well as focusing on keeping people safely sheltered.
- **Enable holistic solutions.** While the city provides many resources (information, guidance, services), it also expects landlords to articulate what they already are doing, or what they will do toward resolving violations.
- **Advance equity.** Avoid stigma in how the city reviews and uses data for decision-making and enforcement, and in alignment with the city’s racial equity plan.
- **Foster respectful partnerships.** This ordinance will improve upon the partnerships between city government, landlords, property owners and residents to address complex problems.
- **Reflect other existing city policies and resources.** This policy is focused on a specific set of chronic nuisance situations, and there are other city policies, practices, services and external resources designed to advance solutions for other specific and systemic problems.
- **Continue to uphold city values and expectations for enforcement officers.** Enforcement officers are expected to be equitable, data-driven, creative and solution-oriented.

2023 Quality of Life Projects, City of Boulder

City/CU Quality of Life Working Group

Project Team: Boulder City Manager Nuria Rivera-Vandermyde, Director of Planning and Development Services Brad Mueller, Deputy City Attorney Sandra Llanes, Assistant City Attorney Laurel Witt, Police Chief Maris Herold, Deputy Police Chief Stephen Redfearn, Senior Data Analyst Tony Spencer, Chief Data Analyst Daniel Reinhard, PhD, Enterprise Data Lead Richard Todd, Paralegal Rewa Ward (supports CAO) Jenn Ross, Code Compliance Supervisor

CU liaisons: Assistant Vice Chancellor for Local Government and Community Relations Lori Call, Acting Associate Vice Chancellor and Dean of Student Devin Cramer

Assisting/Attending as needed: BPD Neighborhood Impact Team Sergeant Darren Fladung, BPD Code Enforcement Unit Supervisor, Jennifer Riley

Chronic Nuisance

Core Chronic Nuisance Team: Brad Mueller (Lead), John Bergelin, Edward Stafford, Sandra Llanes, Laurel Witt, Stephen Redfearn, Tony Spencer, Brenda Ritenour (as needed)

Project Description: The staff team is evaluating how the city currently manages nuisance and abatement processes (current code terms and definitions) with the goal of creating, implementing and operationalizing a chronic nuisance program (to be defined in new code) for the City of Boulder.

The following are considered key components of program development and are underway: Landlord Notification (became Rental Property Calls for Service Notification), Landlord Education, Administrative Actions, Comparison Cities Study, Chronic Nuisance Ordinance, Organizational Structure Changes, and Rental Licensing. Some of these components are also considered stand-alone quality of life projects but are: 1) being steered by the core chronic nuisance team; and 2) overlap as a part of chronic nuisance phasing.

Timeline – Community Engagement initiated April, 2023 and will continue throughout the ordinance process.

Anticipated January-February, 2024: First Reading and Public Hearing

December, 2023-December, 2024: Organizational structuring, staffing and administrative design to implement ordinance and supporting programs and processes.

Landlord Education

Team: Unlocking Government through city contract, Christian Phillips, BARHA are the planning team with Jenn Ross, Jen Riley, Darren Fladung, Stephen Redfearn, Dave Lowrey support/teaching

CU Staff: Jeff Morris

BARHA Staff: Jen Crowell and Meghan Pfansteil

Project Description: A program is being developed in which the city partners with BARHA and others to produce a curriculum for educating landlords regarding their duties and responsibilities as well as to increase knowledge regarding resources and regulations for landlords. Local ordinances and toolkits will be highlighted and explained as a part of this program. This is also a Phase 1 element of the chronic nuisance project.

A proposal was submitted by Unlocking Government to support this project more fully in 2023; adopted in March, 2023. The plan is to create a curriculum that could be self-sustained in 2024 and beyond.

June, 2022: Initiated and explored; stalled by September, 2022.

April-June, 2023: Pilot created in partnership with BARHA, HHS, and Unlocking Government.

September 12, 2023: First session hosted; 1 email sent to rental license owners/applicants/agents created a filled register of 60 attendees and 81 persons on a waitlist for the next session. Feedback was positive and appreciative with some recommendations for focus and timing. Revisions will be implemented for next session.

November 3, 2023: 55 persons registered from email notification to waitlist. New Boulder Model Lease completed through Health and Human Services; will be highlighted as resource provided by city.

Addendum will be focus of recommended landlord-tenant dialogue.

December, 2023: Sessions will be fully evaluated with recommendations provided for changes/improvements/growth in 2024.

Greek Life/Annex Houses

City Staff: Brad Mueller, Sandra Llanes, Laurel Witt, Tony Spencer, Brenda Ritenour, Darren Fladung, Edward Stafford

CU Staff: Devin Cramer, Jeff Morris, Samantha Baldwin

Purpose: City of Boulder and University of Colorado staff are coming together to determine how Greek Life/Annex Houses, and other legacy houses, are passed between classes of students and how they impact the quality of life on University Hill. By more fully understanding this impact, it can be considered in chronic nuisance work and as a stand-alone aspect of life in the University Hill neighborhood. As further scope is defined, other groups will be included in the dialogue for engagement and information sharing purposes. Defined strategies to address various issues may arise from this effort.

Timeline: This project was paused so that the data team could focus on the development of the internal dashboard. Further study of Greek Life, utilizing the database, is now underway.

-The data sharing MOU for BPD and CUPD is currently being updated for inclusion of other departments/additional chronic nuisance and Greek Life work.

Previously Completed Quality of Life Projects

Rental Property Calls for Service Notification

Team: Mike Zidar, Nuria Rivera-Vandermyde, Brad Mueller, Sandra Llanes, Laurel Witt, Stephen Redfearn, Maris Herold

Project Description: This project was requested by BARHA as a pre-cursor to any chronic nuisance modification, with the caveat that until property owners were aware of violations on their property, they could not be held accountable effectively. It was determined that this system would be the foundation of any future landlord accountability model that the city adopted. Quotes were received from several vendors with high costs or limited capacity. IT staff agreed to develop the system in-house.

Timeline-Heads Up to Council on July 14; Go-live of system on July 17, 2023

The [tool](#) received a few questions and inquiries during its first week of operation but very little since that time. BARHA has been an effective partner in sharing information and setting expectations about the limitations of calls for service data itself and the multi-unit base addressing impacts; i.e. the reality that all units are notified regarding calls for service at any multi-unit development. It was promoted through a QR code on postcards mailed to all rental license addresses within the city. Additionally, all emails registered as an applicant, owner, or agent received information via email.

Who to Call Poster for Tenants

Team: Brenda Ritenour, Communications Support

Project Description: A poster was created to assist tenants with “who/how to report” issues to the city. This was released in correlation with the Rental Property Calls for Service notification system so that there are tools for both accountability and support available to tenants. BARHA, Naropa and CU assisted in distribution of posters. The city will continue to make this available to rental properties throughout the city. This resource is available on [Health and Human Services webpage](#); alongside the Landlord-Tenant Handbook, in both English and Spanish. It was promoted through a QR code on postcards mailed to all rental license addresses within the city. Additionally, all emails registered as an applicant, owner, or agent received information via email.

Timeline- July 17, 2023

BPD/CUPD Partnership

June, 2022

New data use agreement put into place and shared Business Intelligence Analyst position was created and hired with costs split between city IT Dept and CU.

Noise Ordinance

Adopted by Council September, 2022

Ordinance change increased enforceability for excessive daytime noise and nuisance parties.

Neighborhood Safety Walk

October, 2022

Three walks were held on May 22, October 21 and November 16. Requests are unanswered for additional lighting in the neighborhood.

Weeds and Trash

Core Team: Sandra Llanes (Lead), Laurel Witt, Jennifer Riley, Brenda Ritenour, Tony Spencer (as needed)

Purpose: The request was to improve the process utilized for notice of violations related to weeds and trash originated from the Code Enforcement Unit (CEU) and is in line with the identification of neighborhood aesthetics and cleanliness as a primary concern and contributor to overall neighborhood culture in the University Hill neighborhood. The administrative process is intended to create an option for posting notices directly on a residence, saving time by negating the need to chase down residents.

Timeline- This ordinance was adopted in February, 2023.

Neighborhood Clean Up

Team: Amanda Nagl (Unlocking Government) led/coordinated in partnership with BARHA and CU staff .

Brought residents and BARHA members, as well as BARHA vendors, together to vet needs related to neighborhood clean up. Residents requested that focus be on dirt yards and debris collection that did not merit citation but did create a “junky” or “disrespectful” feel to the neighborhood. Residents explained that one dirt yard quickly spreads to 3 or more and then impacts an entire block of the neighborhood.

-Struggle to find partners both within the city organization and in the community.

-BARHA vendors not interested; said it should be one on one outreach vs. blanket program.

-BARHA property managers echoed vendors and did not imagine their owners willing to invest as the front yards are trampled quickly.

-About 25 yards are primarily dirt in the neighborhood; Pennsylvania, 14th and University have “blocks” of dirt yards; specifically, the 900 block of University is the most obvious with both sides of the street (many chalked houses in this area).

-Suspect but have not yet been able to verify that some of these 25 may also have multiple nuisance violations. In that case, it may be a conversation point in the engagement strategy associated with the chronic nuisance work.

-Struggle to determine recommendations for yard cover. Resource Central is a partner with the city and spoke with them:

- Non-natural covering **not recommended** as it heats up and will be watered to cool it, creates particles that go into storm water system; this could quickly look bad as well given the user group and the tendency toward a failure to maintain/update
- Must be larger than pea gravel rock fill or large flagstones
- Expensive for landlord with little pay off
- Plant materials will be trampled, not cared for (like garden in a box), takes watering and care to be successful-not willing to invest in this area as not likely to be successful
- Contest for students was mentioned but believes it will not be attractive enough to stay out of front yards, especially on the blocks who have the most issues

- NOCO Water should be able to recommend hardy plants if there are interested landlords who will engage and water/care for plants

-Unlocking Government applied for support with this project through McGuckins Hardware community support program; the project was not selected.

2 other clean-up projects did take place in the neighborhood:

- 1) Sunday March 12 from 1:30pm to 3pm, students led by [Circle K International](#) at CU and the [Phi Kappa Tau](#) fraternity and other greek organizations, along with members of [Foothill Kiwanis](#) and other community members picked up trash and identified maintenance needs in the University Hill neighborhood, bounded by Broadway to the northeast, Baseline to the south, 9th St to the west, Arapahoe Ave to the north, and 20th St to the east.
- 2) Jake Hudson Humphrey and the Hill Boulder: May and June events were held; primarily focused on commercial district.

Timeline-It was decided that the team would support other clean-up efforts and seek out ways to promote neighborhood pride in the upcoming fall season but would not host any event or program specific to dirt yards as this is not a city code or requirement.

ORDINANCE _____

AN ORDINANCE REPEALING AND REENACTING CHAPTER 10-2.5, "ABATEMENT OF PUBLIC NUISANCES," B.R.C. 1981, EXPANDING THE CITY'S LOCAL NUISANCE LAWS TO REDEFINE PUBLIC NUISANCE AND CREATE A CHRONIC NUISANCE DESIGNATION AND AMENDING CHAPTER 10-3, "RENTAL LICENSES," B.R.C. 1981, TO ALIGN WITH THE CHANGES MADE TO CHAPTER 10-2.5; AND SETTING FORTH RELATED DETAILS

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

Section 1. Chapter 10-2.5, "Abatement of Public Nuisance and Chronic Nuisance Property," B.R.C. 1981, is hereby Repealed in its entirety and Reenacted to read as follows:

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

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

- (a) The Boulder Revised Code 1981 presently contains various provisions enacted under the police power of the city which are intended to maintain order and promote the health, safety and welfare of the residents of the city.
- (b) Existing code provisions are directed towards the conduct of persons on private property, and are intended to ensure that neither the conduct of such persons, nor the physical condition of such properties, constitutes a public nuisance to other residents in the vicinity of the properties or passers-by on the public rights-of-way.
- (c) Various code provisions, including those pertaining to unreasonable noise, trash, litter, assault, brawling and harassment, are enforced by the filing of criminal prosecutions against the persons immediately responsible for violations of the same.
- (d) Notwithstanding these enforcement efforts, recurring code violations on parcels of property in the city can result in the creation of public nuisances on such properties which seriously threaten the peace and safety of neighboring residents and undermine the quality of life of the residents of the city.
- (e) Public nuisance laws exist under state statute, but such laws are enforceable only in the state courts and not in the municipal court.
- (f) Section 31-15-401(1)(c), C.R.S., authorizes the city to declare and abate public nuisances.

- (g) Section 16-13-302(1), C.R.S., specifically provides that the state public nuisance laws shall not be construed to limit or preempt the powers of any court or political subdivision to abate or control public nuisances.
- (h) It is necessary and desirable in the public interest to enact a local public nuisance law to: eliminate local public nuisances by removing parcels of real property in the city from a condition that either creates an immediate need for abatement to protect the public health, safety, or welfare, or lead to consistent and repeated violations of state or municipal law; make property owners vigilant in preventing public nuisances on or in their property; make property owners responsible for the use of their property by tenants, guests and occupants; provide locally enforceable remedies for violations of local ordinances; and, otherwise deter public nuisances.
- (i) The purpose of this chapter is to enact a local nuisance abatement law that addresses both public nuisances and chronic nuisances.
- (j) Premises governed by the Colorado Beer Code and Colorado Liquor Code need not be regulated by the provisions of this chapter, because regulations promulgated under Articles 3, 4, and 5 of Title 44 of the Colorado Revised Statutes establish adequate local remedies to address recurring disturbances or other activities occurring on such premises which are offensive to the residents of the neighborhood in which such licensed establishments are located.

10-2.5-2. - Legislative Findings and Statement of Purpose.

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

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

Abatement agreement means a written contract between the city and a person owning or leasing a property, or an agent of the owner, on which there is a public nuisance or that has become a chronic nuisance property, in which the person agrees to timely take all corrective actions to abate the public nuisance or chronic nuisance property and to prevent them from reoccurring as agreed in the contract. Such corrective action may include, without limitation, and as applicable:

- (1) Effective tenant screening, leasing, and rule enforcement;
- (2) Implementing physical improvements for crime prevention;
- (3) Providing security for the property;
- (4) Pursuing other remedies available under any lease or other agreement applicable to the property;
- (5) Promptly reporting nuisance activities to law enforcement; and
- (6) Regular cleaning, maintenance, and repair of the property and the buildings located on it.

1 *Agent* means any person legally authorized to act on behalf of or in place of the owner or
 2 lessee of a property, which may include, without limitation, an operator, a person providing
 3 property management services, a trustee, conservator, and personal representative.

3 *Chronic nuisance property* means:

- 4 (1) A parcel with a single dwelling unit where five or more public nuisances have
 5 occurred within one calendar year; or
- 6 (2) A parcel with two dwelling units where seven or more public nuisances have
 7 occurred within one calendar year; or
- 8 (3) A parcel with three to nine dwelling units where seven or more public nuisances have
 9 occurred within one calendar year; or
- 10 (4) A parcel with ten or more dwelling units where twenty-three or more public
 11 nuisances have occurred within one calendar year.

12 For enforcement purposes and in accordance with Section 5-2, "General Provisions,"
 13 B.R.C. 1981, each day in which a violation of this chapter occurs constitutes a separate violation
 14 remediable through the enforcement provisions of this chapter.

15 *Crime victim* means any natural person against whom any crime has been perpetrated or
 16 attempted. Crime victim, for the purposes of determining a public nuisance or a chronic nuisance
 17 property violation, does not include any request for peace officer protection or any peace officer
 18 intervention in the face of a threat or a perceived threat to person or property, or any request for
 19 the assistance of any peace officer to enforce a court order, including, but not limited to,
 20 circumstances in which the conviction, request for assistance, or other peace officer intervention
 21 arises from an incident relating to domestic violence, dating violence, sexual assault, child
 22 neglect, stalking against any person at or near the premises, or medical emergencies for serious
 23 bodily injury or death.

24 *Leasehold interest* means a lessor's or lessee's interest in real property under a verbal or
 25 written lease agreement.

Legal or equitable interest means every legal and equitable interest, title, estate, tenancy
 and right of possession recognized by law or equity, including, but not limited to, free-holds, life
 estates, future interests, condominium rights, timeshare rights, leaseholds, easements, licenses,
 liens, deeds of trust, contractual rights, mortgages, security interests, and any right or obligation
 to manage or act as agent or trustee for any person holding any of the foregoing.

Notice of violation means a written notice advising the owner, known operator, tenant, or
 occupant of a parcel that the parcel, such persons and other affected persons may be subject to
 proceedings under this chapter if the remaining number of public nuisance violations needed to
 declare the parcel a chronic nuisance property under this chapter occur in or on the parcel within
 the required period of time.

Operator means any person, firm, partnership, company, corporation or association,
 including their employees, agents, or contractors, that controls, operates, or manages a parcel(s).

1 *Parcel or property* means any lot or other unit of real property, including, without
 2 limitation, individual dwelling units or any combination of contiguous lots or units owned by the
 3 same person or persons. The terms *parcel or property* excludes homeless shelters run by a
 4 homeless service provider or government entity.

5 *Public nuisance* means any act or omission that constitutes a violation of the Boulder
 6 Revised Code 1981, public health order, or state criminal law occurring or existing on any parcel
 7 that creates an unreasonable risk of harm or is injurious to the public health, safety, or welfare or
 8 that unreasonably injures, damages, annoys, inconveniences, or disturbs the peace of any
 9 member of the public with normal sensitivity with respect to their comfort, health, repose, or
 10 safety, or with respect to the free use and comfortable enjoyment of their property, sidewalks,
 11 streets, or other public spaces near, upon, and/or around the offending property. Multiple
 12 violations committed within any twenty-four-hour period on or in the same parcel constitute
 13 separate violations, irrespective of whether the violations are otherwise related to each other by
 14 some underlying unity of purpose or scheme. Violations that are first reported to a peace officer
 15 by a person having an ownership or leasehold interest in the parcel where a violation or
 16 violations have occurred, or having a contractual obligation to manage such parcel, or occupying
 17 such parcel may not be deemed public nuisances under this chapter. Violations of the Boulder
 18 Revised Code 1981 regarding noise, trash, and weeds shall create a rebuttable presumption that
 19 such violations are public nuisances. However, this definition of *public nuisance* is subject to the
 20 defenses set forth in subparagraph 10-2.5-17(a)(2), B.R.C. 1981. It is not necessary that a
 21 criminal prosecution has been initiated to establish that a violation has occurred.

22 The term *public nuisance* does not include:

- 23 (1) traffic offenses;
- 24 (2) offenses in which the resident of a parcel is a crime victim;
- 25 (3) receipt of false report as defined in Section 5-5-10, "False Reports," B.R.C. 1981,
 unless the false information was provided by an occupant or owner of the parcel; and
- (4) a false alarm as defined in Chapter 4-16, "Police Alarm Systems," B.R.C. 1981,
 unless the false alarm was caused, permitted, or allowed by an occupant or owner of
 the parcel in violation of Chapter 16.

Relative means an individual related as a member of a "family" as "family" is defined in
 Section 1-2-1, "Definitions," B.R.C. 1981.

10-2.5-3. - Owner Responsibility.

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

- 1 (b) Any person who has possession or control of a parcel as an owner, lessee, agent, tenant or
 2 occupant where any public nuisance or chronic nuisance property activity exists or has
 3 occurred shall be presumed under this chapter to be the person causing or allowing the
 4 public nuisance or chronic nuisance property activity unless clear and convincing evidence
 5 indicate otherwise. Notwithstanding this presumption and any other provision of this
 6 chapter, nothing herein shall be construed to release the owner of a parcel on which there is
 a public nuisance or that has become a chronic nuisance property from the legal obligations
 and responsibilities they have under this chapter and any other laws to prevent their parcel
 from becoming a public nuisance or chronic nuisance property and to abate any such
 activity occurring or existing on their parcel.

7 **10-2.5-4. - Procedures in General.**

- 8 (a) The municipal court is vested with the jurisdiction, duties and powers to hear and decide all
 9 cases arising under this chapter, and to provide the remedies specified herein.
- 10 (b) Any civil action commenced pursuant to the provisions of this chapter shall be in the nature
 11 of a special statutory proceeding. All issues of fact and law in such civil actions shall be
 12 tried to the court without a jury. No equitable defenses may be set up or maintained in any
 13 such action except as provided specifically in this chapter. Injunctive remedies under this
 14 chapter may be directed toward the parcel or toward a particular person.
- 15 (c) Strict Liability. Public nuisance or chronic nuisance property as defined by this chapter
 16 shall be strict liability violations. No culpable mental state shall be required to establish a
 17 public nuisance or chronic nuisance property under this chapter or to obtain court approval
 18 for remedies provided by this chapter. However, if a public nuisance is used by the city to
 19 establish the existence of a chronic nuisance property that has not been previously
 20 adjudicated, all of the elements of such public nuisance, including any culpable mental
 21 state required for the commission of such public nuisance, must be established by the city
 22 by a preponderance of the evidence at the trial on the merits of any civil action commenced
 23 pursuant to the provisions of this chapter.
- 24 (d) Burden of Proof. In any criminal proceeding under this chapter, the city shall have the
 25 burden of proving beyond a reasonable doubt that any alleged public nuisance or chronic
 nuisance property activity occurred on the property, including proving all the elements of
 the offense constituting the public nuisance or chronic nuisance property activity except as
 hereafter provided.
- (1) In any civil proceeding under this chapter, the city shall have the burden of proving,
 by a preponderance of the evidence, that any alleged public nuisance or chronic
 nuisance property activity occurred on the property, including proving all the
 elements of the offense constituting the public nuisance or chronic nuisance property
 activity except as hereafter provided.
- (2) However, the city shall not be required in either case to prove that a person was cited,
 held liable for, or convicted in municipal or any state court for the civil or criminal
 charge underlying that public nuisance or chronic nuisance property activity. If,
 however, a person is held liable for or convicted of the civil or criminal charge
 underlying the alleged public nuisance or chronic nuisance property activity and such

1 decision is final, that decision shall be deemed by the municipal court as conclusive
 2 evidence the public nuisance or chronic nuisance property activity occurred and the
 3 city need only prove the public nuisance or chronic nuisance property activity
 4 occurred on the property.

- 5 (e) Proceedings pursuant to the provisions of this chapter shall be governed by Chapter 1-3,
 6 "Quasi-Judicial Hearings," B.R.C. 1981, and any rules adopted by the city manager.
- 7 (f) Civil actions pursuant to the provisions of this chapter shall be filed by the office of the city
 8 attorney for the city or by such other legal counsel as the city attorney may designate to
 9 represent the city.
- 10 (g) In the event that the city pursues any criminal penalties provided in any other section of
 11 this code, any other civil remedies or the remedies of any administrative action, the
 12 remedies in this chapter shall not be delayed or held in abeyance pending the outcome of
 13 any proceedings in the criminal, civil, or administrative action, or any action filed by any
 14 other person, unless all parties to the action initiated pursuant to this chapter agree
 15 otherwise.
- 16 (h) An action brought pursuant to the provisions of this chapter may be consolidated with
 17 another civil action brought pursuant to the provisions of this chapter that involve the same
 18 parcel of real property. However, such actions shall not be consolidated with any other civil
 19 or criminal action except upon the stipulation of all parties. No party may file any
 20 counterclaim, crossclaim, third-party claim, or setoff of any kind in any action pursuant to
 21 the provisions of this chapter.

22 **10-2.5-5. - Notices for Public Nuisance.**

- 23 (a) Upon discovering a public nuisance, a peace officer may issue and serve a notice to abate
 24 on the owner or lessee, as applicable, or their agent, directing them to remove and abate the
 25 nuisance from the parcel within the time specified in the notice as follows:
 - 26 (1) Within twenty-four hours of the issuance of the notice if the nuisance poses an
 27 imminent and substantial risk of damaging other property (including personal
 28 property of any other person), injuring an individual, or threatening the public health,
 29 safety, or welfare; or
 - 30 (2) Within seven days for all other public nuisances, or such longer period of time as the
 31 peace officer determines is appropriate if, based on the facts and circumstances, the
 32 nuisance could not reasonably be abated within seven days.
- 33 (b) If the owner, lessee, or agent, as applicable, fails to abate the nuisance within the time
 34 stated in the notice to abate, the peace officer may remove or abate the nuisance from the
 35 parcel without delay as provided in Section 10-2.5-9, "Abatement Costs – assessment,
 36 collection and lien," B.R.C. 1981, or take such other action or actions as are authorized in
 37 this chapter.
- 38 (c) The officer may serve the notice to abate by any of the following methods:
 - 39 (1) Personal service of the notice to the owner, lessee, or agent, as applicable;

- (2) Mail a copy of the notice by first class mail to the last known address of the owner as reflected in the records of the Boulder County Assessor's Office or the Boulder County Clerk and Recorder's Office;
 - (3) Mail a copy of the notice by first class mail to the owner, lessee, or agent at their last known address within the city's records or as found in other publicly available records;
 - (4) Email the notice to the owner, lessee, or agent; or
 - (5) Post a copy of the notice in a conspicuous place at the entrance of the parcel or entrance of any building on the parcel.
- (d) The notice to abate shall include:
- (1) A description of the public nuisance;
 - (2) The date by which the nuisance must be abated;
 - (3) A statement that if the nuisance is not abated within the time specified in the notice, the city may take any enforcement action authorized by the Boulder Revised Code 1981;
 - (4) A statement that, if the city abates the nuisance at its cost, it will be entitled to recover its actual internal and external costs plus interest as provided in Section 10-2.5-9, "Abatement Costs – assessment, collection and lien," B.R.C. 1981; and
 - (5) A statement that, if the city's cost of abatement is not paid, a lien shall attach to the parcel as provided in Section 10-2.5-9, "Abatement Costs – assessment, collection and lien," B.R.C. 1981, until such cost and accrued interest is paid in full.

10-2.5-6. - Notices for Chronic Nuisance Property.

No chronic nuisance property abatement action shall be brought forward until the following notice and procedures have been utilized:

- (a) Upon discovery that a parcel will become a chronic nuisance property if one or more violation occurs on the parcel within the requisite time period, a peace officer may issue and serve a written warning notice in the manner provided in subsection (d), of this section. Issuance of this warning shall not be a prerequisite to any proceedings under this chapter.
- (b) Upon discovery that a property has become a chronic nuisance property, a peace officer may issue and serve a notice of chronic nuisance property as provided in subsection (d), of this section.
- (c) The notice of chronic nuisance property is a lawful order. Each directive in the notice is a separate lawful order, and failure to obey any directive is subject to the penalties and costs set forth in this chapter.
- (d) Such written notice shall be deemed sufficient if personally served on the owner of the parcel, sent by email, or sent by first class mail to the owner's address as shown in the records of the Boulder County Assessor's Office or the Boulder County Clerk and Recorder's Office. If the notice is returned as undeliverable, the notice shall be deemed

properly served if it is thereafter posted in a conspicuous place on the parcel. The notice shall contain the following information:

- (1) the street address or a legal description sufficient for identification of the parcel and, if the public nuisance occurred at a multi-unit building, the city manager shall identify the unit or units involved;
 - (2) the nature of the nuisances leading to the chronic nuisance notice, including the provision or provisions of the Boulder Revised Code 1981 or any other law or laws that were violated;
 - (3) the dates of the nuisances;
 - (4) a requirement that the property owner respond in writing to the notice within ten days of the date of the owner's receipt of the notice or date of the posting, whichever is later;
 - (5) a statement that the owner or an agent of the owner is required to respond in writing, which must include a written agreement to abate the chronic nuisance property. That this requirement is a lawful order, and that failure of the owner to provide a written plan and enter into an abatement agreement as described below in Section 10-2.5-7, "Abatement Agreement for Chronic Nuisance Property," B.R.C. 1981, could subject the owner to criminal and civil penalties as provided in this chapter;
 - (6) a warning that, if the owner does not respond, as required, or if the public nuisance is not voluntarily abated to the satisfaction of the peace officer, or as set forth in Section 10-2.5-7, "Abatement Agreement for Chronic Nuisance Property," B.R.C. 1981, the city may file a civil or criminal action to abate the property as a public nuisance or a chronic nuisance property; and
 - (7) a statement that the cost of future enforcement at the parcel as a result of public nuisance activities shall be billed to the property owner and could become a lien if not paid as provided in Section 10-2.5-9, "Abatement Costs – assessment, collection and lien," B.R.C. 1981.
- (e) The peace officer may also send copies of the notice to tenants, occupants, known operators, or others, if in the judgment of the city manager, notice to such additional persons will assist in the abatement of public nuisance conditions.
- (f) The notice may be accompanied by educational materials which, in the judgment of the peace officer, will be of assistance to responsible parties in abating and avoiding public nuisance conditions.
- (g) The city attorney may file a chronic nuisance property abatement action immediately and without the notice set forth in this section if accompanied by a sworn statement that a public nuisance posing an immediate threat to public safety is in existence as a result of the condition or use of the parcel in question. For the purposes of this subsection (g), "threat to public safety" shall include only those violations that involve actual or threatened physical violence directed at persons or animals, substantial property damage, or other specific acts that harm or threaten to harm human health or human safety.

10-2.5-7. - Abatement Agreement for Chronic Nuisance Property.

- (a) An owner issued a notice of chronic nuisance property pursuant to Section 10-2.5-6, “Notices for Chronic Nuisance Property,” B.R.C. 1981, shall within ten business days of such receipt or date of posting, whichever is later, contact the peace officer who issued the notice or other contact individual designated in the notice and enter into an abatement agreement with the city to eliminate the conditions, behaviors, or activities which constitute the chronic nuisance activity at the parcel.
- (b) If the owner does not timely respond to the notice under subsection (a), of this section, or the owner does timely respond, but the city and owner are unable to agree to an abatement agreement to the satisfaction of the city within thirty days of the date of the notice, the city may proceed to abate the nuisance activities using any of the processes and remedies available under the law.
- (c) If the owner fails to comply with any of the terms and conditions of the written abatement agreement entered into with the city under this section, the city may file a civil action in municipal court or, if appropriate, Boulder County district court to enforce the abatement agreement in accordance with its terms and conditions.

10-2.5-8. - Nature of Remedies.

The remedies provided in this chapter shall be either administrative in the form of civil fines or civil injunctive or other relief pursuant to a filed civil abatement action except that violations noted in Section 10-2.5-10, “Criminal Sanctions,” B.R.C. 1981, shall be criminal in nature.

10-2.5-9. - Abatement Costs – assessment, collection and lien.

- (a) If the city acts under any provision of this chapter to abate a public nuisance or chronic nuisance property, the owner of the parcel shall be liable to the city for the city’s total internal and external costs incurred in the abatement. The city’s internal costs shall be set and assessed under a written schedule of fees approved by the city manager, which fees shall be based on a reasonable estimate of the city’s direct and indirect internal costs to abate a nuisance, as amended from time to time. External costs shall include all amounts the city paid a vendor or contractor to assist in the abatement.
- (b) After the abatement is completed, the city shall send the owner of the parcel an invoice itemizing and totaling the city’s internal and external costs for the abatement. The invoice shall be mailed by first class mail addressed to the owner at the address of the parcel abated and to the last known address of the owner as reflected in the records of the Boulder County Assessor’s Office or the Boulder County Clerk and Recorder’s Office. The invoice may also be mailed by first class mail to any known agent of the owner at its last known address(es) within the city’s records or as found in other publicly available records. The invoice may also be sent by email to the owner or any known agent of the owner. The total costs invoiced shall be paid to the city by the owner or their agent within forty-five days of the date of the invoice. If not paid when due, the total assessed cost shall accrue interest at the rate of eight percent compounded annually.

- (c) The city's assessed total cost of abatement, as stated in the invoice sent under this section, plus the interest accruing thereon, shall be deemed a perpetual lien imposed upon the parcel from the date such assessed cost became due until paid.
- (d) Any action taken under this section shall be pursuant to Section 2-2-17, "Administrative Fees, Rates and Charges Constitute Lien," B.R.C. 1981.
- (e) If the offending parcel is not subject to taxation or for any other reason, the city may elect alternative means to collect the amounts due pursuant to this chapter, including the commencement of a judicial action at law or in equity, to include, without limitation, commencement of a civil action in Boulder County district court to judicially foreclose the lien and, after judgment, pursue such remedies as are provided by law.

10-2.5-10. - Criminal Sanctions.

This section shall apply to public nuisances and chronic nuisance properties.

- (a) No person shall:
 - (1) fail to remove and abate the public nuisance from the property within the time specified in the notice to abate after being served as provided in Section 10-2.5-5, "Notices for Public Nuisance," B.R.C. 1981; or
 - (2) fail to obey a notice of chronic nuisance property issued by the city manager under Section 10-2.5-6, "Notices for Chronic Nuisance Property," B.R.C. 1981; or
 - (3) fail or refuse to abide by a temporary or permanent abatement order issued by the municipal court under the provisions of this chapter; or
 - (4) interfere with or prevent, or attempt to interfere with or prevent, any city employee, or city contractor from abating any such nuisance as authorized under this chapter.
- (b) Each day's continuation of a violation or failure to comply is deemed a separate offense and prosecutable and punishable as a separate offense.
- (c) A violation of this section is an offense subject to the penalties of Section 5-2-4, "General Penalties," B.R.C. 1981.

10-2.5-11. - Administrative Remedies.

This section shall apply to public nuisances and chronic nuisance properties.

- (a) No person shall cause, allow, facilitate, or fail to abate a public nuisance from the property within the time specified in the notice to abate as provided in Section 10-2.5-5, "Notices for Public Nuisance," B.R.C. 1981.
- (b) If a peace officer finds a violation of any provision of this chapter, the city manager, after notice and an opportunity for hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may impose a civil penalty according to the following schedule:

- 1 (1) For the first infraction at a property, a penalty assessment of two hundred and fifty
dollars (\$250);
- 2 (2) For a second infraction at a property within a one-year period, a penalty assessment
3 of five hundred dollar (\$500);
- 4 (3) For a third infraction at a property within a one-year period, a penalty assessment of
one thousand dollars (\$1,000); and
- 5 (4) For a fourth and any subsequent infraction at a property within a one-year period, a
penalty assessment of two thousand dollars (\$2,000) for each infraction.
- 6 (c) The city's authority under this section is in addition to any other authority the city has to
7 enforce this chapter, including but not limited to Section 5-2-4, "General Penalties," B.R.C.
1981, and election of one remedy by the city shall not preclude resorting to any other
8 remedy as well.
- 9 (d) Notice under this subsection is sufficient if hand delivered, emailed, mailed, or telephoned
to such person, or by posting in a prominent place on the parcel.
- 10 (e) Each and every day during which any public nuisance continues to exist on a property after
11 the time period for abatement, as stated in the notice to abate, shall be deemed a separate
civil infraction and prosecutable and punishable as a separate infraction for a penalty
12 assessment under this section.
- 13 (f) In establishing the amount of any civil penalty requested, the city may consider, without
14 limitation, any of the following factors:
 - 15 (1) The action or inaction taken by the owner to mitigate or correct the nuisance activities
at the property;
 - 16 (2) Whether the nuisance activities at the property were repeated or continuous;
 - 17 (3) The magnitude or gravity of the nuisance activities;
 - 18 (4) The level of cooperation of the owner with the city;
 - 19 (5) The cost incurred by the city in investigating and correcting, or attempting to correct,
the public nuisance at the property or the chronic nuisance property;
 - 20 (6) The disturbance of neighbors; and
 - 21 (7) Whether the nuisance activities continued on the property after the city provided the
notice to abate under Section 10-2.5-5, "Notices for Public Nuisance," B.R.C. 1981,
or the notice of chronic nuisance property under Section 10-2.5-6, "Notices for
Chronic Nuisance Property," B.R.C. 1981.

**10-2.5-12. - Commencement of Civil Abatement Action to Abate a Public Nuisance or
Chronic Nuisance Property.**

- 24 (a) In addition to the notices required in Sections 10-2.5-5, "Notices for Public Nuisance," and
25 10-2.5-6, "Notices for Chronic Nuisance Property," B.R.C. 1981, the following notification
is required before filing civil abatement actions:

- 1 (1) At least ten calendar days before filing a civil action pursuant to the provisions of this
2 chapter, a notice to the owner and occupants of the parcel shall be posted at some
3 prominent place on the parcel. A notice shall also be mailed to the owner and known
4 operator of the parcel, if applicable. The mailing of the notice shall be deemed
5 sufficient if mailed by first class mail to the owner at the address shown of record
6 relating to the parcel in the records of the Boulder County Assessor's Office. The
7 notice may also be emailed to the owner, any known agents of the owner, and/or the
8 occupants of the parcel. The mailed and, if applicable, emailed notice shall state that
9 the parcel has been identified as the location of an alleged public nuisance or chronic
10 nuisance property and that a civil abatement action pursuant to the provisions of this
11 chapter may be filed.
- 12 (2) Agents of the city are authorized to enter upon the parcel for the purpose of posting
13 these notices and to affix the notice in any reasonable manner to the outside of
14 buildings and structures.
- 15 (3) The city shall not be required to post or mail any notice specified herein before filing
16 a civil abatement action if it determines that any of the following conditions exist;
17 however, the city will provide such notice as soon as reasonably possible after filing a
18 civil abatement action, and, if notice has not been provided earlier, shall provide such
19 notice before any fine or other liability is imposed:
 - 20 (A) The nuisance poses an immediate threat to public safety;
 - 21 (B) Notice would jeopardize a pending investigation of criminal or nuisance
22 activity, confidential informants or other police activity; or
 - 23 (C) Any other emergency circumstance exists.
- 24 (b) A civil abatement action pursuant to the provisions of this chapter shall be commenced by
25 the filing of a complaint verified by an affidavit, which may be accompanied by a motion
for a temporary abatement order, through and in the name of the city attorney. However,
any complaint filed pursuant to subsection 10-2.5-6(g), B.R.C. 1981, shall include an
affidavit or declaration attesting under penalty of perjury to the facts establishing the
immediate threat to public safety.
- (1) The parties-defendants to an action commenced under the provisions of this chapter
and the persons liable for the remedies provided by this chapter may include the
parcel of real property itself, any person owning or claiming any ownership or
leasehold interest in the parcel, all tenants and occupants of the parcel, all managers
and agents for any person claiming an ownership or leasehold interest in the parcel,
any person committing, conducting, promoting, facilitating or aiding in the
commission of a public nuisance, and any other person whose involvement may be
necessary to abate the nuisance, prevent it from recurring, or to carry into effect the
court's orders. None of these parties shall be deemed necessary or indispensable
parties. Any person holding any legal or equitable interest in the parcel who has not
been named as a party-defendant may intervene as a party-defendant. No other person
may intervene.
- (2) The parties-defendants shall be served by personal service on the parties-defendants
or by first class mail to the parcel owner's address as shown in the records of the

- 1 Boulder County Assessor's Office or the Boulder County Clerk and Recorder's
 2 Office. The notice may be emailed in addition to personal service or first class mail.
 3 If the notice is returned as undeliverable, the notice shall be deemed properly served
 4 if it is thereafter posted in a conspicuous place on the parcel.
- 5 (3) The complaint and, if applicable, temporary abatement order, shall be served upon the
 6 real property itself by posting copies of the same in a prominent place on the parcel.
- 7 (c) A civil abatement action shall apply to any public nuisance or chronic nuisance property
 8 matter.

9 **10-2.5-13. - Remedies for Civil Abatement Action.**

- 10 (a) In a civil abatement action, in addition to injunctive relief, or any other remedy available at
 11 law, the court may impose a separate civil judgment on every party-defendant who
 12 committed, conducted, promoted, facilitated, permitted, failed to prevent or otherwise let
 13 happen any public nuisance or chronic nuisance property in or on the parcel that is the
 14 subject of the civil action.
- 15 (b) This civil judgment may also include civil penalties as follows:
- 16 (1) In the amount of not less than one hundred dollars (\$100) and not more than one
 17 thousand dollars (\$1,000) per day, payable to the city, for each day the court finds
 18 that a public nuisance continued to exist on the parcel after the time period for the
 19 required abatement as stated in the notice to abate provided under Section 10-2.5-5,
 20 "Notices for Public Nuisance," B.R.C. 1981; or for each day the court finds the
 21 property continued to exist as a chronic nuisance property either, (A) after the
 22 property owner failed to timely respond to the notice of chronic nuisance property as
 23 provided in Section 10-2.5-6, "Notices for Chronic Nuisance Property," B.R.C. 1981;
 24 or (B) if the owner did timely respond but the city did not approve the submitted
 25 abatement agreement as provided in Section 10-2.5-7, "Abatement Agreement for
 Chronic Nuisance Property," B.R.C. 1981.
- (2) In establishing the amount of any civil penalty requested, the municipal court may
 consider, without limitation, any of the following factors:
- (A) The action or inaction taken by the owner to mitigate or correct the nuisance
 activities at the property;
- (B) Whether the nuisance activities at the property were repeated or continuous;
- (C) The magnitude or gravity of the nuisance activities;
- (D) The level of cooperation of the owner with the city;
- (E) The cost incurred by the city in investigating and correcting, or attempting to
 correct, the public nuisance at the property or the chronic nuisance property;
- (F) The disturbance of neighbors; and
- (G) Whether the nuisance activities continued on the property after the city
 provided the notice to abate under Section 10-2.5-5, "Notices for Public

Nuisance,” B.R.C. 1981, or the notice of chronic nuisance property under Section 10-2.5-6, “Notices for Chronic Nuisance Property,” B.R.C. 1981.

10-2.5-14. - Supplementary Remedies for Public Nuisance and Chronic Nuisance Property.

In any action filed under the provisions of this chapter, in the event that any one of the parties-defendants fails, neglects or refuses to comply with an order of the court, the court may, upon the motion of the city, in addition to or in the alternative to the remedy of contempt and the possibility of criminal prosecution, permit the city to enter upon the parcel of real property and abate the nuisance, take steps to prevent nuisances from occurring, or perform other acts required of the parties-defendants in the court’s orders. In addition, the court may order the parties-defendants to pay for the costs incurred in abating the nuisance as set forth in Section 10-2.5-9, “Abatement Costs – assessment, collection and lien,” B.R.C. 1981.

10-2.5-15. - Stipulated Alternative Remedies.

- (a) The city and any party-defendant to an action pursuant to the provisions of this chapter may voluntarily stipulate orders and remedies, temporary or permanent, that are different from those provided in this chapter.
- (b) The court shall make such stipulations for alternative remedies an order of the court and shall be enforceable as an order of the court.

10-2.5-16. - Remedies Under Other Laws Unaffected.

Nothing in this chapter shall be construed as limiting or forbidding the city or any other person from pursuing any other remedies available at law or in equity, or requiring that evidence or property seized, confiscated, closed, forfeited or destroyed under other provisions of law be subjected to the special remedies and procedures provided in this chapter.

10-2.5-17. - Effect of Abatement Efforts; Defense to Action.

- (a) If a person named as a party-defendant is the owner of a parcel of real property and is leasing the parcel to one or more tenants, or the person named has been hired by the owner of the parcel to manage and lease the parcel, and public nuisances were committed by one or more of the tenants or occupants of the parcel, it shall be a defense to an action pursuant to the provisions of this chapter that said person has:
 - (1) evicted, or attempted to evict by commencing and pursuing with due diligence appropriate court proceedings, all of the tenants and occupants of the parcel that committed each of the alleged public nuisances or the chronic nuisance property; and
 - (2) undertaken reasonable means to abate similar violations on the parcel by the tenants or occupants of the parcel.
- (b) The defenses set forth in subsection (a), of this section, shall not be available to any person who fails to enter into an abatement agreement with the city to eliminate the conditions,

behaviors, or activities which constitute the nuisance activity at the parcel prior to the filing of a nuisance abatement action.

- (c) If, in the judgment of the city manager, a person who has received a notice of violation has established sufficient grounds to assert a defense to an action under subsection (a), of this section, the public nuisance which was the subject of the notice of violation shall no longer be considered a violation within the meaning of this chapter. Nothing herein shall be construed to prohibit the introduction of evidence of said public nuisance at a subsequent court proceeding, if a public nuisance or chronic nuisance property action is commenced on the basis of additional public nuisances, for the purpose of determining whether the defendants named in such action have undertaken and pursued with due diligence reasonable means to avoid a recurrence of similar violations on the parcel of real property by the present and future tenants or occupants of the parcel.
- (d) Except as provided in subsection (a), of this section, the fact that a party-defendant took steps to abate the nuisance or chronic nuisance property after receiving the notice of its existence does not constitute a defense to an action brought pursuant to the provisions of this chapter.

10-2.5-18. - Abatement Orders.

- (a) Issuance and Effect of Temporary and Permanent Abatement Orders on public nuisance and chronic nuisance property in a civil abatement action. The issuance of temporary or permanent abatement orders under this chapter shall be governed by the provisions of Rule 65 of the Colorado Rules of Civil Procedure pertaining to temporary restraining orders, preliminary injunctions and permanent injunctions, except to the extent of any inconsistency with the provisions of this chapter, in which event the provisions of this chapter shall prevail. Temporary abatement orders provided for in this chapter shall go into effect immediately when served upon the property or party against whom they are directed. Permanent abatement orders shall go into effect as determined by the court. No bond or other security shall be required of the city.
- (b) Form and Scope of Abatement Orders. Every abatement order under this chapter shall set forth the reasons for its issuance; shall be reasonably specific in its terms; shall describe in reasonable detail the acts and conditions authorized, required or prohibited; and shall be binding upon the parcel, the parties to the action, agents and employees and any other person named as a party-defendant in the civil abatement action and served with a copy of the order.
- (c) Substance of Abatement Orders. Temporary or permanent abatement orders entered pursuant to the provisions of this chapter shall be narrowly tailored to address the particular nuisance. Such orders may include but are not limited to:
 - (1) requiring any parties-defendants to take steps to abate the nuisance;
 - (2) authorizing the city manager to take reasonable steps to abate the public nuisance or chronic nuisance property and prevent it from recurring, considering the nature and extent of the public nuisance;

- 1 (3) requiring certain named individuals to stay away from the parcel at all times or for
2 some specific period of time;
- 3 (4) issuing any order that is reasonably necessary to access, maintain or safeguard the
4 parcel; and
- 5 (5) issuing any order that is reasonably necessary for the purposes of abating or
6 preventing the public nuisance or chronic nuisance property from occurring or
7 recurring; provided, however, that no such order shall require the seizure of, the
8 forfeiture of title to, or the temporary or permanent closure of a parcel or the
9 appointment of a special receiver to protect, possess, maintain, or operate a parcel.
- 10 (d) Temporary Abatement Orders.
- 11 (1) The purpose of a temporary abatement order shall be to temporarily abate an alleged
12 public nuisance or chronic nuisance property pending the final determination of a
13 civil abatement action. A temporary abatement order may be issued by the court
14 pursuant to the provisions of this section even if the effect of such order is to change,
15 rather than preserve, the status quo.
- 16 (2) At any hearing on a motion for a temporary abatement order, the city shall have the
17 burden of proving that there are reasonable grounds to believe that a public nuisance
18 or chronic nuisance property occurred in or on the parcel and, in the case of a
19 temporary order granted without notice to the parties-defendants, that such order is
20 reasonably necessary to avoid some immediate, irreparable loss, damage or injury. In
21 determining whether there are such reasonable grounds, the court may consider
22 whether an affirmative defense may exist under any of the provisions of this chapter.
- 23 (3) At any hearing on a motion for a temporary abatement order or a motion to vacate or
24 modify a temporary abatement order, the court shall temper the rules of evidence and
25 admit hearsay evidence unless the court finds that such evidence is not reasonably
reliable and trustworthy. The court may also consider the facts alleged in the verified
complaint or in any affidavit submitted in support of the complaint or motion for
temporary abatement order.
- (e) Permanent Abatement Orders.
- (1) At the trial on the merits of a civil abatement action commenced under this chapter,
the city shall have the burden of proving by a preponderance of the evidence that a
public nuisance or chronic nuisance property occurred on or in the parcel identified in
the complaint. At such a trial, the city must also prove, by a preponderance of the
evidence, any public nuisances asserted as grounds for the civil action that have not
been previously adjudicated. The Colorado Rules of Evidence shall govern the
introduction of evidence at all such trials.
- (2) Where the existence of a public nuisance or chronic nuisance property is established
in a civil abatement action pursuant to the provisions of this chapter after a trial on the
merits, the court shall enter a permanent abatement order requiring the parties-
defendants to abate the public nuisance or chronic nuisance property and take specific
steps to prevent the same and other nuisances from occurring or recurring on the
parcel or in using the parcel.

(f) Violation of Abatement Order.

- (1) No person shall fail to comply with any abatement order issued pursuant to the provisions of this chapter. Each day that a person is in violation of any such abatement order shall constitute a separate violation of these provisions.
- (2) Whether or not a prosecution is brought pursuant to subparagraph (f)(1), above, the municipal court shall retain full authority to enforce its abatement orders by the use of its contempt powers. In a contempt proceeding brought as a result of the violation of an abatement order issued pursuant to this chapter, the municipal court may, in its discretion, treat each day during which a party is in violation of an abatement order as a separate act of contempt.

10-2.5-19. - Motion to Vacate or Modify Temporary Abatement Orders.

- (a) Timing of Motion to Vacate Temporary Order. At any time a temporary abatement order is in effect, any party-defendant or any person holding any legal or equitable interest in any parcel governed by such an order may file a motion to vacate or modify said order. Any motion filed under this subsection (a) shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at a hearing.
- (b) Standard of Proof for Vacation of Temporary Order. The court shall vacate the order if it finds by a preponderance of the evidence that there are no reasonable grounds to believe that a public nuisance or chronic nuisance property was committed in or on the parcel. The court may modify the order if it finds by a preponderance of the evidence that such modification will not be detrimental to the public interest and is appropriate, considering the nature and extent of the public nuisances.
- (c) Continuance of Hearing. The court shall not grant a continuance of any hearing set under this section unless all the parties so stipulate.
- (d) Consolidation of Hearing with Other Proceedings. If all parties consent, the court may order a trial on the merits to be advanced and tried with the hearing on these motions.

10-2.5-20. - Limitation of Actions.

Actions pursuant to the provisions of this chapter shall be filed no later than one year after the public nuisance or chronic nuisance property incident that serves as the basis for the bringing of an action pursuant to this chapter. Actions concerning a chronic nuisance property shall be commenced no later than one year after: (1) the last nuisance activity occurs that causes the parcel to be a chronic nuisance property; or (2) the notice of chronic nuisance property is served, whichever is later. This limitation shall not be construed to limit the introduction of evidence of any other public nuisance violations that occurred more than one year before the filing of the complaint for the purpose of establishing the existence of a public nuisance or chronic nuisance property or when relevant for any other purpose.

10-2.5-21. - Effect of Property Conveyance.

When title to a parcel is conveyed from one person to another, any public nuisances existing at the time of the conveyance which could be used under this chapter to prove that a public nuisance or chronic nuisance property exists with respect to such parcel, shall not be so used unless a reason for the conveyance was to avoid the parcel being declared a public nuisance or chronic nuisance property pursuant to the provisions of this chapter. It shall be a rebuttable presumption that a reason for the conveyance of the parcel was to avoid the parcel from being declared a public nuisance or chronic nuisance property pursuant to the provisions of this chapter if:

- (1) the parcel was conveyed for less than fair market value;
- (2) the parcel was conveyed to an entity or entities controlled directly or indirectly by the person conveying the parcel including but not limited to, any occupants, operators, owners, or other tenants; or
- (3) the parcel was conveyed to a relative of the person conveying the parcel.

10-2.5-22. - Attorney's Fees.

- (a) Other than as specifically provided by this section, attorney's fees shall not be awarded to any party in a civil abatement proceeding brought pursuant to the provisions of this chapter.
- (b) Attorney's fees may be awarded at the discretion of the court under the following circumstances:
 - (1) Where there has been a judicial finding of the existence of a chronic nuisance property, as defined by the provisions of this chapter, whether such finding is made at trial or as part of a settlement in advance of a trial; and
 - (2) When the party found to be responsible for the chronic nuisance property failed to submit an abatement agreement pursuant to subsection 10-2.5-7(a), B.R.C. 1981.

10-2.5-23. - City Manager Rules.

The city manager is authorized to adopt rules and regulations necessary in order to interpret, further define or implement the provisions of this chapter.

Chapter 2.5 Abatement of Public Nuisances**10-2.5-1. Legislative Findings and Statement of Purpose.**

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

- ~~(a) The Boulder Revised Code presently contains various provisions enacted under the police power of the city which are intended to maintain order and promote the health, safety and welfare of the residents of the city.~~
- ~~(b) Existing code provisions are directed towards the conduct of persons on private property, and are intended to ensure that neither the conduct of such persons, nor the physical~~

condition of such properties, constitutes a nuisance to other residents in the vicinity of the properties or passers-by on the public rights-of-way.

(c) ~~Various code provisions, including those pertaining to unreasonable noise, trash, litter, assault, brawling and harassment, are enforced by the filing of criminal prosecutions against the persons immediately responsible for violations of the same.~~

(d) ~~Notwithstanding these enforcement efforts, recurring code violations on parcels of property in the city can result in the creation of public nuisances on such properties which seriously threaten the peace and safety of neighboring residents and undermine the quality of life of the residents of the city.~~

(e) ~~Public nuisance laws exist under the state statutes, but such laws are enforceable only in the state courts and not in the municipal court.~~

(f) ~~Section 31-15-401(1)(c), C.R.S., authorizes the city to declare and abate public nuisances.~~

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

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

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

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

10-2.5-2. Definitions.

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

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

~~Leasehold interest means a lessor's or lessee's interest in real property under a verbal or written lease agreement.~~

~~Legal or equitable interest means every legal and equitable interest, title, estate, tenancy and right of possession recognized by law or equity, including, but not limited to, free holds, life~~

1 estates, future interests, condominium rights, timeshare rights, leaseholds, easements, licenses,
 2 liens, deeds of trust, contractual rights, mortgages, security interests and any right or obligation
 to manage or act as agent or trustee for any person holding any of the foregoing.

3 Notice of violation means a written notice advising the owner and tenant or occupant of a
 4 parcel that the parcel, such persons and other affected persons may be subject to proceedings
 under this chapter if the remaining number of separate violations needed to declare the parcel a
 5 public nuisance under this chapter occur in or on the parcel within the required period of time.
 Such written notice shall be deemed sufficient if sent by first class mail or certified mail to the
 6 parcel, addressed to the owner by name and to all tenants and occupants and to the owner by
 name at any different address of the owner as shown in the records of the Boulder County
 Assessor or of the Boulder County Clerk and Recorder. Each notice of violation shall be limited
 7 to one separate date or range of dates of violation. Although each notice of violation may list a
 number of specific code violations on a particular date or range of dates, it shall count as notice
 8 of a single violation for the purpose of establishing the separate violations needed to declare the
 parcel a public nuisance.

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

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

12 Public nuisance means the condition or use of any parcel on or in which two or more
 13 separate violations have occurred within the preceding twelve month period between August 1
 and continuing through July 31 of each year or three or more separate violations have occurred
 14 within any period of twenty four consecutive months, if, during each such violation, the conduct
 of the person committing the violation was such as to annoy residents in the vicinity of the parcel
 15 or of passers by on the public streets, sidewalks and rights of way in the vicinity of the parcel.
 However, this definition of "public nuisance" is subject to the defenses set forth in paragraph 10-
 16 2.5-8(a)(2), B.R.C. 1981. Also, a public nuisance is not established when the only person
 annoyed is a law enforcement officer engaged in carrying out official duties.

17 Relative means an individual related as a member of a "family" as "family" is defined in
 18 Section 1-2-1, "Definitions," B.R.C. 1981.

19 Separate violation means any act or omission that constitutes a violation of the Boulder
 Revised Code, or state criminal law with the exception of traffic offenses and offenses in which
 the resident of the parcel is a crime victim, provided that: an ongoing and uninterrupted violation
 20 shall be deemed to have been committed only on the last day during which all the necessary
 elements of the violation existed; multiple violations committed within any twenty four hour
 21 period of time on or in the same parcel shall be considered a single separate violation,
 irrespective of whether the violations are otherwise related to each other by some underlying
 22 unity of purpose or scheme; and violations that are first reported to a city police or code
 enforcement officer by a person having an ownership or leasehold interest in any parcel, or
 23 having a contractual obligation to manage such parcel, or occupying such parcel shall not be
 deemed violations under this chapter. It is not necessary that a criminal prosecution has been
 24 initiated in order to establish that a violation has occurred.

10-2.5-3. Nature of Remedies.

The remedies provided in this chapter shall be civil and remedial in nature except that, if any person knowingly fails or refuses to abide by a temporary or permanent abatement order issued by the municipal court under the provisions of this chapter, such person shall be guilty of a misdemeanor.

10-2.5-4. Nuisance Prohibited.

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

10-2.5-5. Procedures in General.

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

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

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

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

(e) Actions pursuant to the provisions of this chapter shall be filed by the office of the city attorney for the city or by such other legal council as the city attorney may designate to represent the city.

(f) In the event that the city pursues any criminal penalties provided in any other section of this code, any other civil remedies or the remedies of any administrative action, the remedies in this chapter shall not be delayed or held in abeyance pending the outcome of

any proceedings in the criminal, civil or administrative action, or any action filed by any other person, unless all parties to the action initiated pursuant to this chapter agree otherwise.

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

~~10-2.5-6. Required Procedures Prior to Commencement of Public Nuisance Action.~~

(a) — ~~No action shall be brought pursuant to the provisions of this chapter until the following procedures have been utilized:~~

(1) — ~~Following the first violation that serves as the basis for a nuisance abatement action, written notice of violation shall be given by the city manager to the owner of the parcel at which the nuisance conditions occurred.~~

(A) — ~~The notice shall be personally served upon the owner or served by certified mail to the parcel, addressed to the owner by name, mailed to the owner by name at any different address of the owner as shown in the records of the Boulder County Assessor or of the Boulder County Clerk and Recorder. Personal service or service by mail shall be given no later than thirty days following the date of the violation.~~

(B) — ~~The notice shall specify the nature of the nuisance, the date or dates of the nuisance and the provision of the Boulder Revised Code that was violated. When a nuisance occurred at a multi-unit building, the city manager shall identify the unit or units involved in the problem.~~

(C) — ~~The city manager shall also send copies of the notice to tenants or others if, in the judgment of the city manager, notice to such additional persons will assist in abatement of nuisance conditions.~~

(D) — ~~The notice may be accompanied by educational materials which, in the judgment of the city manager, will be of assistance to responsible parties in abating and avoiding nuisance conditions.~~

(E) — ~~No notice shall be given pursuant to this provision, nor shall any event be utilized as a "first incident" for the purpose of bringing a nuisance abatement action, unless the city manager determines that such incident properly could serve as the basis of the filing of a criminal case in municipal court.~~

(2) — ~~Following a second violation within a twelve-month period, or a third violation within a twenty-four-month period, but prior to the filing of a nuisance abatement action based upon those violations, the city manager shall schedule a settlement meeting involving all persons who will be named as party defendants in any nuisance abatement proceeding based upon those incidents.~~

- (A) ~~No meeting shall be set up based upon any incident unless the city manager, in the exercise of due diligence, determines that there is reasonable cause to believe that a violation or problem that could trigger the nuisance abatement process has occurred.~~
- (B) ~~Notice of the meeting may be given by personal service, by first class mail confirmed by a telephonic communication with the person to whom notice is provided, or by any other means so long as it can be established that notice of the meeting was actually received by the party to whom such notice was provided. Notice shall be provided within thirty days of the date of the final violation that serves as the basis for the meeting.~~
- (C) ~~Landlords, tenants, residents and others whose corrective action is deemed necessary by the city manager in order to resolve nuisance conditions will be asked to attend the settlement meeting. Owners of rental properties may participate in such meetings through representatives legally authorized to enter into voluntary compliance agreements on behalf of those owners.~~
- (D) ~~Neighbors, victims and others may also be invited to attend such meetings. However, attendance of such persons will not be required. When victims and impacted neighbors do not choose to attend such meetings, the city manager will attempt to determine the impact of nuisance conditions upon such persons and present that information at the meeting.~~
- (E) ~~The scheduling, location and format of settlement meetings will be determined by the city manager in a manner that the city manager believes will be best suited resolving the problem. The city manager may utilize mediators, facilitators and other experts (including community volunteers) to assist in the resolution of the problem.~~
- (F) ~~The desired outcome of the settlement meeting will be to obtain a voluntary compliance agreement, in which relevant parties agree to take corrective action to abate and avoid nuisance conditions.~~
- (G) ~~If no voluntary compliance agreement is achieved or, if such agreement is achieved and thereafter the city manager determines that a party has failed to comply with the terms of such agreement to the city manager's sole satisfaction, or if an owner fails to attend a scheduled settlement meeting to which they have been invited, the matter may be referred to the city attorney for evaluation and potential filing of a nuisance abatement action. Proof of violation of the voluntary compliance agreement shall not be required to establish the existence of a public nuisance.~~
- (b) ~~Upon receipt of a referral for nuisance abatement, the city attorney shall evaluate the case and determine whether or not to initiate a court action. In evaluating such a case, the city attorney may consider, without limitation, the following factors:~~
- ~~(1) The level of cooperation of potential parties in attempting to resolve issues;~~
 - ~~(2) The level of disturbance associated with the violations and the impact of those violations upon neighbors or other victims;~~

- (3) — The degree to which potential parties to the nuisance abatement action have taken reasonable steps to try and resolve the problem;
 - (4) — The existence or nonexistence of prior cases or incidents in which potential parties to a nuisance abatement action have been involved and the nature of that involvement;
 - (5) — The percentage of units in a multi-unit housing context in which problems have occurred;
 - (6) — The existence or nonexistence, within a multi-unit housing context, of a condominium association or other internal governing body or management structure that might provide an avenue for relief of the problem and the probability that such governing body or management structure will be able to resolve the problem;
 - (7) — The existence of any equitable, factual, legal, ethical or other consideration of the type that would normally be considered by an attorney when deciding whether or not to file a civil action;
 - (8) — The availability of resources required for the prosecution of the potential case;
 - (9) — The availability of any other enforcement tools that might be better suited to resolution of the particular problem; and
 - (10) — The probability of prevailing at a trial on the matter.
- (c) — Notwithstanding the settlement meeting and case evaluation procedures described in subsections (a)(2) and (b) above, the city manager may request that the city attorney file a nuisance abatement action immediately if, in the city manager's judgment, facts exist to support a sworn statement that a public nuisance posing an immediate threat to the public safety is in existence as a result of the condition or use of parcel in question. The city attorney shall file such an action only if he or she concurs with the city manager's request. The city manager and city attorney may consult with the city council on such actions. For the purposes of this subsection (c), threat to the public safety shall include only those violations that involve actual or threatened physical violence directed at persons or animals, substantial property damage or other specific acts that harm or threaten to harm human health or human safety.

10-2.5-7. Commencement of Public Nuisance Actions; Prior Notification.

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

- (2) ~~Agents of the city are authorized to enter upon the parcel for the purpose of posting these notices and to affix the notice in any reasonable manner to buildings and structures.~~
- (3) ~~The city shall not be required to post or mail any notice specified herein before filing a civil action if it determines that any of the following conditions exist; however, the city will provide such notice as soon as reasonable possible after filing a civil action, and, if notice has not been provided earlier, shall provide such notice before any fine or other liability is imposed:~~
- (A) ~~The public nuisance poses an immediate threat to public safety;~~
 - (B) ~~Notice would jeopardize a pending investigation of criminal or public nuisance activity, confidential informants or other police activity; or~~
 - (C) ~~Any other emergency circumstance exists.~~
- (b) ~~An action pursuant to the provisions of this chapter shall be commenced by the filing of a verified complaint or a complaint verified by an affidavit, which may be accompanied by a motion for a temporary abatement order, through and in the name of the city attorney. Any complaint filed pursuant to Subsection 10-2.5-6(c) without a settlement meeting or case evaluation shall include an affidavit or declaration attesting under penalty of perjury to the facts establishing the immediate threat to public safety.~~
- (1) ~~The parties defendant to an action commenced under the provisions of this chapter and the persons liable for the remedies provided by this chapter may include the parcel of real property itself, any person owning or claiming any ownership or leasehold interest in the parcel, all tenants and occupants of the parcel, all managers and agents for any person claiming an ownership or leasehold interest in the parcel, any person committing, conducting, promoting, facilitating or aiding in the commission of a public nuisance, and any other person whose involvement may be necessary to abate the nuisance, prevent it from recurring, or to carry into effect the court's orders. None of these parties shall be deemed necessary or indispensable parties. Any person holding any legal or equitable interest in the parcel who has not been named as a party defendant may intervene as a party defendant. No other person may intervene.~~
- (2) ~~The parties defendant shall be served as provided in the Colorado Rules of Civil Procedure for other civil actions except as otherwise provided in this chapter.~~
- (3) ~~The summons, complaint and, if applicable, temporary abatement order shall be served upon the real property itself by posting copies of the same in some prominent place on the parcel.~~

10-2.5-8. Effect of Abatement Efforts; Defense to Action.

- (a) ~~If a person named as a party defendant is the owner of a parcel of real property and is leasing the parcel to one or more tenants, or the person named has been hired by the owner of the parcel to manage and lease the parcel, and the separate violations which constitute the alleged public nuisance were committed by one or more of the tenants or occupants of the parcel, it shall be a defense to an action pursuant to the provisions of this chapter that said person has:~~

- 1 (1) ~~Evicted, or attempted to evict by commencing and pursuing with due diligence~~
2 ~~appropriate court proceedings, all of the tenants and occupants of the parcel that~~
3 ~~committed each of the separate violations that constitute the alleged public~~
4 ~~nuisance; and~~
- 5 (2) ~~Has, considering the nature and extent of the separate violations, undertaken and~~
6 ~~pursued with due diligence, reasonable means to avoid a recurrence of similar~~
7 ~~violations on the parcel by the present and future tenants or occupants of the~~
8 ~~parcel.~~
- 9 (b) ~~The defenses set forth in subsection (a) above shall not be available to any person who~~
10 ~~fails to attend a settlement meeting set up by the city manager prior to the filing of a~~
11 ~~nuisance abatement action.~~
- 12 (c) ~~If, in the judgment of the city manager, a person who has received a notice of violation~~
13 ~~has established sufficient grounds to assert a defense to an action under subsection (a)~~
14 ~~above, the separate violation which was the subject of the notice of violation shall no~~
15 ~~longer be considered a separate violation within the meaning of this chapter. Nothing~~
16 ~~herein shall be construed to prohibit the introduction of evidence of said separate~~
17 ~~violation at a subsequent court proceeding, if a public nuisance action is commenced on~~
18 ~~the basis of additional separate violations, for the purpose of determining whether the~~
19 ~~defendants named in such action have undertaken and pursued with due diligence~~
20 ~~reasonable means to avoid a recurrence of similar violations on the parcel of real property~~
21 ~~by the present and future tenants or occupants of the parcel.~~
- 22 (d) ~~Except as provided in subsection (a) above, the fact that a defendant took steps to abate~~
23 ~~the public nuisance after receiving the notice of its existence does not constitute a defense~~
24 ~~to an action brought pursuant to the provisions of this chapter.~~

15 ~~10-2.5-9. Court Directed Settlement Procedure.~~

- 16 (a) ~~After a nuisance abatement action is filed pursuant to the provisions of this chapter, any~~
17 ~~party may file with the court clerk and serve a request for a court settlement conference,~~
18 ~~together with a notice for setting of such request. The court shall grant such request if, in~~
19 ~~its judgment, a settlement conference is appropriate under the particular circumstances.~~
20 ~~The court shall not grant any such request over the objection of the city attorney if the~~
21 ~~action is filed pursuant to Subsection 10-2.5-6(c) due to the city manager's determination~~
22 ~~of an immediate threat to public safety.~~
- 23 (b) ~~At any time prior to trial, the court may, without a request of the parties, order that a~~
24 ~~settlement conference be held.~~
- 25 (c) ~~Any settlement conference held pursuant to the provisions of subsections (a) or (b) above~~
26 ~~shall be conducted as follows:~~
- 27 (1) ~~The court settlement conference shall, if the request is granted, be conducted by~~
28 ~~any available judge other than the judge assigned to handle a trial in the matter, or~~
29 ~~by such other settlement officer, referee or mediator as may be selected by the~~
30 ~~court for such purpose.~~
- 31 (2) ~~All discussions at the settlement conference shall remain confidential and shall~~
32 ~~not be disclosed to the judge who presides at trial.~~

(3) — Statements at the settlement conference shall not be admissible evidence for any purpose at the trial of the matter or in any other proceeding.

(d) — Settlement conferences, when held, shall be provided without special costs to the parties except in the following circumstances:

(1) — With court approval, the parties may agree to retain the services of a particular mediator or settlement officer to assist with settlement discussions. In this event, the parties must agree to pay for the services of such outside settlement facilitator and must agree about the terms of such payment.

(2) — In the event that any party failed to participate in a pre filing settlement meeting pursuant to the provisions of paragraph 10-2.5-6(a)(2), B.R.C. 1981, the court may order such party to pay up to one-half of the reasonable costs or value of court-ordered settlement procedures.

~~10-2.5-10. Abatement Orders.~~

(a) — Issuance and Effect of Temporary and Permanent Abatement Orders: The issuance of temporary or permanent abatement orders under this chapter shall be governed by the provisions of Rule 65 of the Colorado Rules of Civil Procedure pertaining to temporary restraining orders, preliminary injunctions and permanent injunctions, except to the extent of any inconsistency with the provisions of this chapter, in which event the provisions of this chapter shall prevail. Temporary abatement orders provided for in this chapter shall go into effect immediately when served upon the property or party against whom they are directed. Permanent abatement orders shall go into effect as determined by the court. No bond or other security shall be required of the city.

(b) — Form and Scope of Abatement Orders: Every abatement order under this chapter shall set forth the reasons for its issuance; shall be reasonably specific in its terms; shall describe in reasonable detail the acts and conditions authorized, required or prohibited; and shall be binding upon the parcel, the parties to the action, their attorneys, agents and employees and any other person named as a party defendant in the public nuisance action and served with a copy of the order.

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

(1) — Requiring any parties defendant to take steps to abate the public nuisance;

(2) — Authorizing the city manager to take reasonable steps to abate the public nuisance activity and prevent it from recurring, considering the nature and extent of the separate violations;

(3) — Requiring certain named individuals to stay away from the parcel at all times or for some specific period of time;

(4) — Issuing any order that is reasonably necessary to access, maintain or safeguard the parcel; and

(5) — Issuing any order that is reasonably necessary for the purposes of abating the public nuisance or preventing the public nuisance from occurring or recurring; provided, however, that no such order shall require the seizure of, the forfeiture of title to, or the temporary or permanent closure of, a parcel, or the appointment of a special receiver to protect, possess, maintain or operate a parcel.

(d) — Temporary Abatement Orders:

(1) — The purpose of a temporary abatement order shall be to abate temporarily an alleged public nuisance pending the final determination of a public nuisance. A temporary abatement order may be issued by the court pursuant to the provisions of this section even if the effect of such order is to change, rather than preserve, the status quo.

(2) — At any hearing on a motion for a temporary abatement order, the city shall have the burden of proving that there are reasonable grounds to believe that a public nuisance occurred in or on the parcel and, in the case of a temporary order granted without notice to the party defendants, that such order is reasonably necessary to avoid some immediate, irreparable loss, damage or injury. In determining whether there are such reasonable grounds, the court may consider whether an affirmative defense may exist under any of the provisions of this chapter.

(3) — At any hearing on a motion for a temporary abatement order or a motion to vacate or modify a temporary abatement order, the court shall temper the rules of evidence and admit hearsay evidence unless the court finds that such evidence is not reasonably reliable and trustworthy. The court may also consider the facts alleged in the verified complaint or in any affidavit submitted in support of the complaint or motion for temporary abatement order.

(e) — Permanent Abatement Orders:

(1) — At the trial on the merits of a civil action commenced under this chapter, the city shall have the burden of proving by a preponderance of the evidence that a public nuisance occurred on or in the parcel identified in the complaint. At such trial, the city must also prove, by a preponderance of the evidence, any separate violations asserted as grounds for the public nuisance action that have not been previously adjudicated. The Colorado Rules of Evidence shall govern the introduction of evidence at all such trials.

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

(f) — Violation of Abatement Order:

(1) — No person shall fail to comply with any abatement order issued pursuant to the provisions of this chapter. Each day that a person is in violation of any such abatement order shall constitute a separate violation of these provisions.

(2) — Whether or not a prosecution is brought pursuant to paragraph (1) of this subsection, the municipal court shall retain full authority to enforce its abatement orders by the use of its contempt powers. In a contempt proceeding brought as a result of violation of an abatement order issued pursuant to this chapter, the municipal court may, in its discretion, treat each day during which a party is in violation of an abatement order as a separate act of contempt.

10-2.5-11. Attorney's Fees.

(a) — Other than as specifically provided by this section, attorney's fees shall not be awarded to any party in a nuisance abatement proceeding brought pursuant to the provisions of this chapter.

(b) — Attorney's fees may be awarded at the discretion of the court under the following circumstances:

(1) — Where there has been a judicial finding of the existence of a nuisance, as defined by the provisions of this chapter, whether such finding is made at trial or as part of a settlement in advance of a trial; and

(2) — When the party found to be responsible for the nuisance failed to attend a settlement meeting set up by the city manager pursuant to paragraph 10-2.5-6(a)(2), B.R.C. 1981.

10-2.5-12. Motion to Vacate or Modify Temporary Abatement Orders.

(a) — Timing of Motion to Vacate Temporary Order: At any time a temporary abatement order is in effect, any party defendant or any person holding any legal or equitable interest in any parcel governed by such an order may file a motion to vacate or modify said order. Any motion filed under this subsection (a) shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing.

(b) — Standard of Proof for Vacation of Temporary Order: The court shall vacate the order if it finds by a preponderance of the evidence that there are no reasonable grounds to believe that a public nuisance was committed in or on the parcel. The court may modify the order if it finds by a preponderance of the evidence that such modification will not be detrimental to the public interest and is appropriate, considering the nature and extent of the separate violations.

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

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

10-2.5-13. Civil Judgment.

In any case in which a public nuisance is established, in addition to a permanent abatement order, the court may impose a separate civil judgment on every party defendant who committed, conducted, promoted, facilitated, permitted, failed to prevent or otherwise let happen any public nuisance in or on the parcel that is the subject of the public nuisance action. This civil judgment shall be for the purpose of compensating the city for the costs it incurs in pursuing the

remedies pursuant to the provisions of this chapter, and shall not be punitive in nature. For the purpose of this section, costs include expenses of the type detailed in § 13-16-122, C.R.S.

10-2.5-14. Supplementary Remedies for Public Nuisances.

In any action filed under the provisions of this chapter, in the event that any one of the parties fails, neglects or refuses to comply with an order of the court, the court may, upon the motion of the city, in addition to or in the alternative to the remedy of contempt and the possibility of criminal prosecution, permit the city to enter upon the parcel of real property and abate the nuisance, take steps to prevent public nuisances from occurring, or perform other acts required of the defendants in the court's orders.

10-2.5-15. Stipulated Alternative Remedies.

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

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

10-2.5-16. Remedies Under Other Laws Unaffected.

Nothing in this chapter shall be construed as limiting or forbidding the city or any other person from pursuing any other remedies available at law or in equity, or requiring that evidence or property seized, confiscated, closed, forfeited or destroyed under other provisions of law be subjected to the special remedies and procedures provided in this chapter.

10-2.5-17. Limitation of Actions.

Actions pursuant to the provisions of this chapter shall be filed no later than one year after the final public nuisance incident that serves as the basis for the bringing of an action pursuant to this chapter. This limitation shall not be construed to limit the introduction of evidence of any other separate violations that occurred more than one year before the filing of the complaint for the purpose of establishing the existence of a public nuisance or when relevant for any other purpose.

10-2.5-18. Effect of Property Conveyance.

When title to a parcel is conveyed from one person to another, any separate violation existing at the time of the conveyance which could be used under this chapter to prove that a public nuisance exists with respect to such parcel, shall not be so used unless a reason for the conveyance was to avoid the parcel being declared a public nuisance pursuant to the provisions of this chapter. It shall be a rebuttable presumption that a reason for the conveyance of the parcel was to avoid the parcel from being declared a public nuisance pursuant to the provisions of this chapter if: a) the parcel was conveyed for less than fair market value; b) the parcel was conveyed to an entity or entities controlled directly or indirectly by the person conveying the parcel; or c) the parcel was conveyed to a relative of the person conveying the parcel.

Section 2. Chapter 10-3, "Rental Licenses," B.R.C. 1981, is amended to read as follows:

10-3-3. - Terms of Licenses.

(a) License terms shall be as follows:

Licenses, other than reduced term licenses issued under Section 10-3-4, "Reduced Term License," B.R.C. 1981, or temporary licenses issued under Section 10-3-9, "Temporary License Appeals," B.R.C. 1981, shall expire four years from issuance or when ownership of the licensed property is transferred.

(b) In addition to any other applicable requirements, new licenses and renewals shall require that the licensee submit to the city manager a complete application packet for the license, on forms provided by the manager. The application shall satisfy the following requirements:

(1) A current rental inspection report (for a new license except as set forth in Section 10-3-5, "License Procedure for Newly Constructed Rental Property," B.R.C. 1981,) certifying compliance with those portions of Chapter 10-2, "Property Maintenance Code," and Section 9-9-16, "Lighting, Outdoor," B.R.C. 1981, for which the report form requires inspection and certification; and

(2) The operator shall certify on the application forms provided by the manager that the operator has a current valid contract with a commercial trash hauler for removal of accumulated trash from the licensed property in accordance with Subsection 6-3-3(b), B.R.C. 1981; and

(3) The property has no existing violations pursuant to Chapter 10-2.5, "Abatement of Public Nuisance and Chronic Nuisance Property," B.R.C. 1981.

(c) The city manager shall issue separate licenses for individual buildings. Such licenses shall cover all dwelling units and rooming units within such buildings. In a building containing attached but individually owned dwelling units, or any other dwelling units which may be separately conveyed, the city manager shall issue separate licenses for each dwelling unit. A structure, or group of structures, shall be considered to be a single building if it has been assigned a single street address by the City. If a complex of buildings on one property is under common ownership, and this owner is willing to have a common expiration date for the licenses for all dwelling and rooming units, the city manager may consider the whole complex to be the equivalent of a single building for the purposes of licensing and the fee schedule in Section 4-20-18, "Rental License Fee," B.R.C. 1981.

(d) Whenever an existing license is renewed, the renewal license shall be effective from the date of expiration of the last license if the applicant submits a complete renewal application by or within ninety days from the expiration date.

(e) Issuance of any license (new or renewed) requires meeting the energy efficiency requirements of Chapter 10-2, "Property Maintenance Code, Appendix C - Energy Efficiency Requirements," B.R.C. 1981.

10-3-4. - Reduced Term License.

- (a) The city manager shall issue a reduced term license whenever the city manager determines that:
- (1) Violations of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, revealed during an inspection, individually or in combination, demonstrate a failure to maintain the rental property in a safe, sanitary and clean condition so that the dwelling endangers the health and safety of the occupants;
 - (2) There is or has been a violation of a limitation on numbers of occupants or numbers of dwelling units found in Title 9, "Land Use Code," B.R.C. 1981, which demonstrates a failure to maintain the rental property in compliance with that title; or
 - (3) Violations of Section 9-9-16, "Lighting Outdoor," B.R.C. 1981, of a building or complex of buildings on the same property with multiple dwelling units that are all held under common ownership, revealed during an inspection or otherwise, demonstrate a failure to maintain the rental property in compliance with Title 9, "Land Use Code," B.R.C. 1981; or
 - (4) There is or has been a violation of Chapter 10-2.5, "Abatement of Public Nuisance and Chronic Nuisance Property," B.R.C. 1981, within the past two years.
- (b) The terms of a reduced term license shall be as follows:
- (1) For violations of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, the license term shall be reduced to twenty-four months.
 - (2) For violations of Title 9, "Land Use Code," and Chapter 10-2.5, "Abatement of Public Nuisance and Chronic Nuisance Property," B.R.C. 1981, the license term shall be reduced to twelve months. A reduced term license issued to allow the operator to bring the rental property into compliance with Section 9-9-16, "Lighting Outdoor," B.R.C. 1981, may only be issued one time.
- (c) The city manager may issue a reduced term short-term rental license if the operator has received a penalty, suspension or other order pursuant to Section 10-3-16(a), "Administrative Remedy," B.R.C. 1981.
- (d) If an operator disagrees with the decision of the city manager to issue a reduced term license under subsection (a) of this section, such person may appeal the city manager's decision within thirty days after the issuance of the reduced term license, as follows:
- (1) For reduced term licenses issued as a result of violations of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, the appeal shall be made as provided in Section 10-2-2, Section 111, "Means of Appeal," B.R.C. 1981.
 - (2) For reduced term licenses issued as a result of violations of Title 9, "Land Use Code," or Chapter 10-2.5, "Abatement of Public Nuisance and Chronic Nuisance Property," B.R.C. 1981, the appeal shall be made to the board of zoning adjustment, although the fee amount shall be as specified for an appeal to the board of building appeals.

...

10-3-14. - Local Agent Required.

Whenever any rental property is required to be licensed under this chapter, and neither the owner nor the operator is a natural person domiciled within Boulder County, Colorado, the owner shall appoint a natural person who is capable of responding to the property within sixty minutes, to serve as the local agent of the owner and the operator for service of such notices as are specified in Section 10-2-2, "Property Maintenance Code," Chapter 10-2.5, "Abatement of Public Nuisance and Chronic Nuisance Property," Section 108, "Unsafe Structures and Equipment," and Section 109, "Emergency Measures," B.R.C 1981, and notices given to the local agent shall be sufficient to satisfy any requirement of notice to the owner or the operator. The owner shall notify the city manager in writing of the appointment within five days of being required to make such an appointment, and shall thereafter notify the city manager of any change of local agent within fifteen days of such change.

...

10-3-16. - Administrative Remedy.

(a) If the city manager finds that a violation of any provision of this chapter, ~~or~~ Chapter 10-2, "Property Maintenance Code," or Chapter 10-2.5, "Abatement of Public Nuisance and Chronic Nuisance Property," B.R.C. 1981, exists, the manager, after notice to the operator and an opportunity for hearing under the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions to remedy the violation:

(1) Impose a civil penalty according to the following schedule:

~~(A) For any violation in the following areas or of affordability standards: The area south of Arapahoe Avenue, north of Baseline Road, east of 6th Street and west of Broadway, the area south of Baseline Road, north of Table Mesa Drive, east of Broadway and west of U.S. Route 36 and the area south of Canyon Boulevard, north of Arapahoe Avenue, west of Folsom Street and east of 15th Street or for any violation of affordability standards for an affordable accessory unit approved under Subsection 9-6-3(n), B.R.C. 1981:~~

~~(i) For the first violation of the provision, \$500;~~

~~(ii) For the second violation of the same provision, \$750; and~~

~~(iii) For the third violation of the same provision, \$1,000;~~

~~(B) For a violation in any other area:~~

~~(A*i*) For the first violation of the provision, \$150;~~

~~(B*ii*) For the second violation of the same provision, \$300; and~~

~~(C*iii*) For the third violation of the same provision, \$1,000.~~

(2) Revoke the rental license;

(3) If the city manager finds that a short-term rental license was issued to a licensee who is determined not to comply with subsections (1), (2) or (3) of Section 10-3-19(c), "Short-Term Rentals," B.R.C. 1981, the city manager shall revoke the short-term rental license; and

- 1 (4) Issue any order reasonably calculated to ensure compliance with this chapter, and
2 Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.
- 3 (b) If the city manager finds that an affordable accessory unit was advertised, offered for rent
4 or rented for an amount in excess of the affordability standard, in addition to the actions the
5 manager may take under subsection (a), of this section, the manager shall impose a penalty
6 equal to the amount charged in excess of the affordability standard during the term of the
7 license, plus interest at the rate of twelve percent per annum, and shall pay such funds
8 collected to the tenant who was charged in excess of the affordability standard.
- 9 (c) If notice is given to the city manager by the operator at least forty-eight hours before the
10 time and date set forth in the notice of hearing on any violation that the violation has been
11 corrected, the manager will reinspect the building. If the manager finds that the violation
12 has been corrected, the manager may cancel the hearing.
- 13 (d) The city manager's authority under this section is in addition to any other authority the
14 manager has to enforce this chapter, and election of one remedy by the manager shall not
15 preclude resorting to any other remedy as well.
- 16 (e) The city manager may, in addition to taking other collection remedies, certify due and
17 unpaid charges to the Boulder County Treasurer for collection as provided by Section 2-2-
18 12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for
19 Collection," B.R.C. 1981.
- 20 (f) To cover the costs of investigative inspections, the city manager will assess operators a
21 \$250 fee per inspection, where the city manager performs an investigative inspection to
22 ascertain compliance with or violations of this chapter.
- 23 (g) The city manager shall not accept a new application from the same licensee for the same
24 dwelling unit or units after revocation of a license:
- 25 (1) For at least six months following the revocation; and
- (2) Unless the applicant demonstrates compliance with all licensing requirements.

...

10-3-20. - Occupancy.

- 18 (a) Every operator of any property with fewer than five dwelling units, shall at the time any
19 dwelling unit is shown to any prospective renter, post conspicuously on the inside of the
20 main entrance to each dwelling unit a sign listing a maximum occupancy number that shall
21 be no greater than the maximum number of unrelated individuals permitted under Section
22 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981 in a form specified by the city
23 manager. Any such sign may include an occupancy limit smaller than that allowed by
24 Section 9-8-5.
- 25 (b) Each license shall include a notation of the legal occupancy, including the number of
unrelated individuals permitted for each dwelling unit covered by the license. Acceptance
of the license shall constitute a waiver of any claim for a non-conforming occupancy in
excess of the occupancy stated on the license. The notation on the license shall also not
provide the basis for an assertion of non-conforming occupancy.

(c) Each advertisement for rental shall include a statement of the maximum occupancy, such statement shall include a number no greater than the number of unrelated individuals permissible pursuant to Section 9-8-5, B.R.C. 1981, of the dwelling unit to be rented. Any such advertisement may include an occupancy limit smaller than that allowed by Section 9-8-5.

(d) A license holder affected by the legal occupancy determination may file with the city manager a written request for reconsideration. Such request shall be filed within fourteen days of such determination and shall set forth the facts and any evidence supporting the legal occupancy asserted by the licensee. The city manager shall respond to the request within thirty days of the written request. The original determination shall remain in effect during the reconsideration period.

Section 3. This Ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 4. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this ____ day of _____ 2024.

Aaron Brockett,
Mayor

Attest:

City Clerk

1 READ ON SECOND READING, PASSED AND ADOPTED this ____ day of
2 _____ 2024.

3
4 _____
5 Aaron Brockett,
6 Mayor

7 Attest:

8 _____
9 City Clerk

DRAFT

Attachment D - Peer City Comparison Data

Chronic Nuisance Comparison Chart - DRAFT for Research and Discussion Purposes															
	Colorado				Municipalities Around the U.S.								Includes Fee for Service Provision		
	Boulder, CO	Parker, CO	Fort Collins, CO	Aurora, CO	Kansas City, MO	Madison, WI	Minneapolis, MN	Portland, OR	Seattle, WA	Spokane, WA	Springfield, IL	Berkeley, CA	Cincinnati, OH	Milwaukee, WI	Anchorage, AK
Chronic Nuisance Ordinance? (Link to code if yes)	Boulder does not have a chronic nuisance ordinance, but does have a nuisance abatement ordinance. The abatement ordinance is enacted before a conviction	Yes	Yes	Chronic Nuisance Ordinance, Abatement Ordinance, and other ordinances	Yes	Yes, Chronic Nuisance Provisions	Does not have a chronic nuisance ordinance, but does require a notice for nuisance abatement	Yes	Yes, Noise does not include noise ordinance, but does include other noise-related activities	Yes	Yes, Noise does not include noise ordinance, but does include other noise-related activities	Yes, it is a public nuisance ordinance	Yes	Yes	Fee for service only
Purpose of Chronic Nuisance Ordinance	N/A	To promote the health, safety, soundness, convenience, order, prosperity and welfare of the persons and future inhabitants of the Town	Expand the civil abatement enforcement tools, dealing with increased crime, recent rash of more serious crimes	Prohibition, Hearing Enforcement, Abatement, and other provisions	Impact of nuisance on health, safety and welfare	From ordinance: The Madison Common Council finds that certain premises within the City receive and require more than the general, acceptable level of police services and Building Inspection Department services, place an undue and inappropriate burden on City of Madison taxpayers, and constitute public nuisances. Nuisance activity contributes	N/A	Not explained	In the aftermath of the case, the city has a working group to create a chronic nuisance ordinance, and the city is currently in the process of drafting a public nuisance ordinance, specifically related to drug public nuisance, abandoned vehicles, and other nuisances	Explained in legislative declaration below	Not explained	Provides City Attorney the authorization to abate public nuisances and issue a fine of \$10,000	Not explained	substantial interference with the comfortable enjoyment of life, health and safety of the community.	N/A
Applies to Residential and/or commercial districts	Nuisance abatement applies in both	Both, however commercial has some different standard for things like noise. Does not include any public property	Yes, but different conditions required for different types of building (see below)	Both	Both	Applies to all properties	N/A	Both	Both but see note above	Both	Applies to all properties	Both	Both	Applies to all properties	Both
Number of contacts in a period required before triggering the ordinance	2 in a 12 month period or 3 in a 24 month period	3 or more in 60 days or 7 or more in 12 months	3 or more nuisance activities have occurred on the property within 90 days, or 7 or more nuisance activities have occurred within 1 year, with each activity occurring on a separate day. (different for multi unit complexes, drug related activity, and abandoned properties)	If the acts listed above are occurring, then it is a criminal nuisance property	3 or more in 30 days, 7 or more in 30 days, 7 or more in 30 days	three (3) or more calls for police services that have resulted in Enforcement Action for Nuisance Activities on three (3) separate days within a ninety (90) day period;for has generated a number of cases from the Building Inspection Department for Nuisance Activities from separate inspections occurring within a one (1) year period	N/A	3 or more in 30 days. Separate amounts for illegal substance activity	3 or more in 60 days, 7 or more in 12 months. Separate amounts for illegal substance activity	Criminal Activities: 3 or more in a 60 day period or 3 or more in a 365 day period. Other Activities: three incidents within 24 months	Criminal Activities: 3 or more in a 60 day period or 3 or more in a 365 day period. Other Activities: three incidents within 24 months	Failure to abate as ordered through the Zoning Adjustments Board allows city council to take action at their next scheduled council meeting	Within a 12 month period for residential units: 2-3 units, 4 calls; 4-19 units, 14 calls; 20-39 units, 18 calls; 40-119 units, 20 calls; 120-399 units, 26 calls	3 or more in 30 days	Residential: 8 calls in a calendar year, commercial: 100 calls in a calendar year
Activity at abandoned property included?	No	Yes	Yes	Yes	No	No, but some of the nuisances listed could occur at an abandoned property (i.e., damage to property, violent crimes, trespassing)	N/A is included in regular nuisance provisions)	No	No	Yes, any	No	Yes	No	No	No
Notice of Chronic Nuisance Activity	Notice of a nuisance violation	Yes	yes	Yes	Yes	Yes	Yes, notice for regular nuisance violations	Yes	Yes	Yes	Yes	Notice is from the ZAB to the owner; if they consent within 10 days then no further action is taken for nuisance activity. Public hearings are scheduled 60 days after the ZAB recommendations and 30 days after the City Clerk Report.	Yes	Yes	No
From who?	City Manager	Neighborhood Services	code enforcement officer	Chief of Police	Director of housing and neighborhood services	Chief of Police and/or Director of Building Inspections	The City Attorney	Precinct commander	Chief of Police	Chief of police or designee	Chief of Police	Zoning Adjustments Board	Chronic nuisance investigator (after law dict. has reviewed)	Chief of police	N/A
To who?	Owner and Tenant or Occupant of parcel	Person in charge of the property	the owner or lessee, as applicable, or their agent. Can also mail to the last known address as reflected in records of Larimer County Treasurer OR mail it on the property	Property Owner	Property owner	the Premises owner identified by the City of Madison Assessor's records for that Premises, and a courtesy copy to the Alder of the affected district	(1)The owner of the place at or in which a nuisance is maintained or permitted (2)The owner's agent, if known to the city attorney (3)All other persons known to the City Attorney who maintain or permit the nuisance and all agents of such other persons known to the city attorney.	Person in charge (actual or constructive possession of property)	Property owner and "other persons in charge" (actual or constructive possession of property) - includes property managers)	Person in charge	Person in charge	Notice is from the ZAB to the owner; if they consent within 10 days then no further action is taken for nuisance activity. Public hearings are scheduled 60 days after the ZAB recommendations and 30 days after the City Clerk Report.	Owner or operator	premises owner or other responsible party	N/A
Required response from Notice Recipient	Ordinance does not specify, but there is an opportunity for a settlement meeting with the city manager	Contact neighborhood services within 10 days	No response, but must act. Notice instructs owner or lessee to abate nuisance within 24 hours. If no answer is received within 7 days for all other units, then enforcement action may happen.	Ordinance does not specify method but allows for 30 days prior to proceedings; court for the notice to cease operating as a nuisance	Abatement measures must be taken within 30 days along with a plan sent to director of neighborhoods and housing services. This process is overseen by a chronic nuisance board	Yes, must respond within ten days with either an appeal or a proposed plan of action	fourteen (14) days from the mailing or seven (7) days from personal service of the notice (will get deferred if the person contacts the police)	contact police within 10 days to discuss nuisance activities. If no response, gets another notice and is referred to city attorney (will get deferred if the person contacts the police)	contact the police within 7 days. Notice does say owner may be responsible for fee. If no response or inadequate abatement, may have abatement proceedings	must establish plan of action with the office who issued the notice	Respond within 10 days to the chief of police, propose a course of action to abate the problem that the chief must agree with	Must provide a plan to follow within 10 days that the law dept. and the investigator approve of	Must respond with a plan in 10 days (chief can accept or reject)	N/A	
Abatement plan?	Yes, voluntary compliance agreement determined during the settlement meeting with the city manager. If there is no response or can't agree on a plan, will be referred to the city attorney. City manager can also request an immediate filing with court	Yes, a plan of action, written notice or enforcement action may commence	Must state nuisance within notice or enforcement action may commence	Yes, the owner can provide a plan within the 10 day notice period or in civil court but must pay all associated fees	Yes, within 30 days	Yes, "If the owner responds to the CNP Notice pursuant to subsection (a) with a nuisance abatement proposal, the Chief of Police or the Director of Building Inspection may accept, reject or work with the owner to modify the proposal. The plan is acceptable if it can reasonably be expected to result in abatement of the Nuisance Activities described in the CNP Notice within sixty (60) days."	Yes, after meeting to discuss with city attorney	No	Yes, must be written down after agreed upon with the P.O. Called "settlement agreement"	Yes, 15 days to abate	yes, course of action. Does not have a time frame	Yes, written by the owner or operator. Must complete abatement or send a notice plan every 180 days	Yes, plan within 10 days and 45 days implement	N/A	
Fee for excessive calls	No	No	No, but there is a fee for abating the nuisance if the property owner does not do so within specified time. If they do not pay the bill, a lien is attached to the home	Yes, but more of an assessment of cost to the city than an established fee. Highly subjective and case by case	No	Yes, the notice must include A statement that the cost of future enforcement may be assessed as a special charge against the Premises.	No, but inspection fees based on a formal list depending on type or severity, income, other, etc.	No	No	No	No	City recoups its costs	Does not respond or does not follow the plan. No fees during the abatement plan period	Yes, if failure to respond or rejection of plan.	Yes and includes lien on property
Exclusion for domestic violence	No	No	Domestic violence is not included in the list of offenses under the definition of "nuisance activity", so yes, excluded	Doesn't fit, different context of ordinance	Yes, excludes domestic violence	Yes "activities that are "domestic abuse" incidents pursuant to Wis. Stat. § 948.075, shall not be included as Nuisance Activities unless the incidents have been reviewed by the Chief of Police and the Office of the City Attorney and a determination is made that, based upon the specific facts of each incident, the activities should be deemed "Nuisance Activities"	N/A	No	Domestic violence is not included in the list of offenses under the definition of "nuisance activity", so yes, excluded	Yes, specifically excludes domestic violence or sexual violence	Yes, because it is not included in the definition.	Yes. Note: landlords who retaliate against DV are in violation of the Risk and the Violence Against Women Act	Domestic abuse included in list of "nuisance activity", so not excluded	Yes	
Other exclusions	None	No, very broad definition of public nuisance	Anything not included in the definition of "nuisance activity"	Anything not included in definition of criminal nuisance; there are egregious criminal acts	Also excludes: police intervention arises from an incident relating to dating violence, sexual assault or stalking against any person at or near the premises.	Anything not included in the specified list of nuisances	N/A	Anything not included in the definition of "nuisance activity" (several exclusions)	Anything not included in the definition of "nuisance activity" (several exclusions)	N/A	N/A	N/A. Can make reasonable accommodations for those with a disability under the ADA	Anything not included in the definition of "nuisance activity" (Early interview list)	sexual assault, child neglect, false alarm, mental health emergencies (i.e., serious injury or death), assistance with things like underage in bars	N/A
Enforcement Procedure if Failure to Respond to Notice or Failure to Abate															
Failure to respond to notice	Yes, notice required before filing civil action (or least 30 days before)	Not addressed in the ordinance	Failure to act on notice requirements will lead to an enforcement action	City takes possession and closes the property	Yes. City will abatement and charge the owner	Failure by the Premises owner to respond within ten (10) days as directed in the subdivision shall result in a forfeiture of one thousand dollars (\$1,000) plus court costs and fees.	Yes, nuisance abatement can be commenced within a year of response	Action may be filed	Yes, after 30 days unless Chief abates the case to the city attorney for no compliance, attorney can file an action in any court of competent jurisdiction	Action may be filed	Action may be filed	No second notice, if they do not respond or do not abate, the city attorney can start the nuisance abatement process which can include both civil and criminal sanctions	Action may be filed, but not first for additional calls		N/A
Administrative process before court process	Yes, city manager will first schedule a settlement meeting before any abatement proceeding (unless requests otherwise)	Yes	No	Yes, hearing in front of chronic nuisance board	Yes, hearing in front of chronic nuisance board	Yes, notice and abatement plan process	No	No	No	Yes	Yes	Yes, through a hearing examiner, who decides to do financial review or pursue criminal charges. A property owner/manager may request this.	Yes	Yes	N/A
Court involvement	Yes, municipal court vested with jurisdiction, fines, and powers to hear and decide all cases under all cases	Yes. Must Court	Yes, municipal court has jurisdiction.	Yes, Municipal Court can start proceeding	Yes, can appeal	Yes, as an appeal option to Administrative Review Board	Yes, court has several other options under 231.360	Yes. No response or failure to abate will lead to court response... court determines whether it is a "chronic nuisance property" which leads to more severe enforcement	Yes. Once the chief of police refers the case to the city attorney for no compliance, attorney can file an action in any court of competent jurisdiction	Yes	After the required number of incidents, the city attorney can start nuisance abatement proceedings (says nothing about whether the person was able to abate the nuisance... can bring a case either way. Attempting to mitigate the nuisance can be a factor when assessing fines).	Yes, if appealed	Not addressed in ordinance	Not addressed in ordinance	
Burden of Proof	Preponderance of the evidence (the city)	Preponderance of the evidence (the city)	Preponderance of the evidence (the city)	Preponderance of the evidence (the city)	Not listed but does say retaliation is preponderance of the evidence	Unspecified in ordinance	Unspecified	Preponderance of the evidence (city)	Preponderance of the evidence (city)	Preponderance of the evidence (city)	Preponderance of the evidence (city)	Not specified but the hearing officer must make findings as part of the written determination	Preponderance of the evidence (city)		N/A

Attachment D - Peer City Comparison Data

Remedies	Can file an injunction, criminal, civil or civil action. Temporary and permanent abatement orders possible.	Enjoying the nuisance and authorizing its restraint, removal, termination or, at sole discretion, Neighborhood Services may utilize the penalty assessment procedures.	The punishment for the infraction would be a penalty assessment of \$250 for the first offense, \$500 for a second offense within 60 days, \$1,000 for a third offense within 120 days, and \$2,000 for fourth and subsequent offenses within 1 year. If the person cited does not voluntarily pay the penalty assessment stated in the citation, the city	Appears and pays all associated costs, files a bond for one year not less than the assessed value of the structure, enters into stipulation with the city that the owner will immediately abate all conditions leading to the nuisance. Failure to comply means the city	Excluding fine schedule with a separate offense for each day.	Required to attend a landlord training put on by the City attorney's Office, must come up with an abatement plan that is approved by the city, may get additional fines. Failure by the Premises owner to respond within ten (10) days as directed in this subdivision shall result in a forfeiture of one thousand dollars (\$1,000) plus court costs and fees. Can also assess fees against the owner for the cost of abatement	See above, court involvement	Fines, attorneys fees, sealing off the property for 6 months to one year if of public health and safety is at issue, Fines per day of nuisance activity, attorneys fees	Order immediate abatement, levy fines, allow police on property, order that will reasonably abate future nuisance activities. If further failure occurs, fee of up to \$25K. Will revoke any licenses	Impose a warrant of abatement, impose a maximum of \$1000 per day, order property owner to stop the nuisance, report that needs to be followed up on by the court within	Can close the property for any use for 30-360 days or can implement any other remedy appropriate to abate the nuisance. \$100/day fine if the person in control knows about the nuisance, and more. If the city needs to do the nuisance abatement, bills for service will be sent to the person in control and a lien will be put on the property until it is paid	A determination that a premises is a chronic nuisance subject to bills for the cost of enforcement pursuant to Section 761.5 and subject to fines or criminal prosecution pursuant to Section 761.7 shall be effective against the owner until the nuisance is abated under the thresholds established in Section 761.3(b).	Fee schedule	N/A
Do remedies include revoking rental license from the property?	No	Not addressed	No, Fort Collins does not currently have a rental licensing program (looking on setting it up)	Not specifically called out but the building is effectively closed for up to one year. Aurora does not have a long term rental license	No, rental licensing only around building safety	License not included. Does say specifically that landlords may not retaliate or evict tenants.	Yes	Not addressed	Yes, suspension or revocation any an option after court determines property is a chronic nuisance possible.	No, but there is tenant relocation fees and recovery	No	No	No, but may affect business or other kinds of licenses for commercial properties.	N/A
Notes?		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.	One year limitation on enforcement actions. Strict liability on all misdemeanor offenses under this title	Aurora also calls out the number of occurrences of issues to be deemed a nuisance under certain sections of code (2 of the same in one year or 3 single occurrences in annual code, ch. 24 for example)	Prohibits retaliation against tenant and false reporting	Also did a two-year requirement with chronic nuisance. You can read about it here.	Minnesota does do rental license revocation and has a tiered system for inspections. Yes. For an overview of what this entails, see link	This chronic nuisance ordinance reminds me more of Aurora's, intended to address criminal nuisance issues due to the severity of punishments available. 3/28/24. Determined Portland has multiple "chronic nuisance" ordinances within their codes. Note: The article below discusses counties around Portland that have chronic nuisance in their codes.	This suspension or revocation any an option after court determines property is a chronic nuisance possible.	Also includes temporary closure action		Dept. of Law a lot more involved here from the beginning rather than getting involved later in the enforcement process. i.e., reviews the abatement plans, looks at the nuisance violations to see if they qualify, etc. City attorney must also submit reports on compliance every 30 days to an advisory committee. This ordinance was originally drafted to address violence rather than noise. Evictions and retaliations are prohibited	Link linked here.	

29-79-040, <https://www.pcoznet.com/Portals/0/29-79-040.pdf>

Two code sections:
<https://www.portland.gov/development/2024/01/24/portland-city-code-chapter-29-79-040>
<https://www.portland.gov/development/2024/01/24/portland-city-code-chapter-29-79-040>

“OLD” [CURRENT] Boulder CODE

[Side annotations in the Comments format relate to how the current code has been updated.]

Chapter 2.5 Abatement of Public Nuisances

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

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

- (a) The Boulder Revised Code presently contains various provisions enacted under the police power of the city which are intended to maintain order and promote the health, safety and welfare of the residents of the city.
- (b) Existing code provisions are directed towards the conduct of persons on private property, and are intended to ensure that neither the conduct of such persons, nor the physical condition of such properties, constitutes a nuisance to other residents in the vicinity of the properties or passers-by on the public rights-of-way.
- (c) Various code provisions, including those pertaining to unreasonable noise, trash, litter, assault, brawling and harassment, are enforced by the filing of criminal prosecutions against the persons immediately responsible for violations of the same.
- (d) Notwithstanding these enforcement efforts, recurring code violations on parcels of property in the city can result in the creation of public nuisances on such properties which seriously threaten the peace and safety of neighboring residents and undermine the quality of life of the residents of the city.
- (e) Public nuisance laws exist under the state statutes, but such laws are enforceable only in the state courts and not in the municipal court.
- (f) Section 31-15-401(1)(c), C.R.S., authorizes the city to declare and abate public nuisances.
- (g) Section 16-13-302(1), C.R.S., specifically provides that the state public nuisance laws shall not be construed to limit or preempt the powers of any court or political subdivision to abate or control nuisances.
- (h) It is necessary and desirable in the public interest to enact a local public nuisance law in order to: eliminate local public nuisances by removing parcels of real property in the city from a condition that consistently and repeatedly violates municipal law; make property owners vigilant in preventing public nuisances on or in their property; make property owners responsible for the use of their property by tenants, guests and occupants; provide locally enforceable remedies for violations of local ordinances; and otherwise deter public nuisances.
- (i) The purpose of this chapter is to enact such a local public nuisance law.
- (j) Premises governed by the Colorado Beer Code and Colorado Liquor Code need not be regulated by the provisions of this chapter, because regulations promulgated under articles 46, 47 and 48 of title 12 of the Colorado Revised Statutes establish adequate local remedies to address recurring disturbances or other activities occurring on such premises which are

Commented [WL1]: The legislative statements are amended in the new ordinance to include chronic nuisance, in addition to public nuisance.

offensive to the residents of the neighborhood in which such licensed establishments are located.

10-2.5-2. Definitions.

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

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

Leasehold interest means a lessor's or lessee's interest in real property under a verbal or written lease agreement.

Legal or equitable interest means every legal and equitable interest, title, estate, tenancy and right of possession recognized by law or equity, including, but not limited to, free-holds, life estates, future interests, condominium rights, timeshare rights, leaseholds, easements, licenses, liens, deeds of trust, contractual rights, mortgages, security interests and any right or obligation to manage or act as agent or trustee for any person holding any of the foregoing.

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

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

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

Public nuisance means the condition or use of any parcel on or in which two or more separate violations have occurred within the preceding twelve-month period between August 1 and continuing through July 31 of each year or three or more separate violations have occurred within any period of twenty-four consecutive months, if, during each such violation, the conduct of the person committing the violation was such as to annoy residents in the vicinity of the parcel or of passers-by on the public streets, sidewalks and rights-of-way in the vicinity of the parcel. However, this definition of "public nuisance" is subject to the defenses set forth in paragraph 10-2.5-8(a)(2), B.R.C. 1981. Also, a public nuisance is not established when the only person annoyed is a law enforcement officer engaged in carrying out official duties.

Relative means an individual related as a member of a "family" as "family" is defined in Section 1-2-1, "Definitions," B.R.C. 1981.

Commented [WL2]: The definition of parcel is the same except that it is clarified to not apply to homeless shelters.

Commented [WL3]: Public nuisance is proposed to be modified to be one separate violation. City staff provide multiple warnings before issuing a public nuisance violation.

Commented [WL4]: Four exceptions are proposed for public nuisance:

1. traffic offenses;
2. offenses in which the resident of a parcel is a crime victim;
3. receipt of false report as defined in Section 5-5-10, "False Reports," B.R.C. 1981, unless the false information was provided by an occupant or owner of the parcel; and
4. a false alarm as defined in Chapter 4-16, "Police Alarm Systems," B.R.C. 1981, unless the false alarm was caused, permitted, or allowed by an occupant or owner of the parcel in violation of Chapter 16.

Additionally, chronic nuisance only applies to residential properties.

Separate violation means any act or omission that constitutes a violation of the Boulder Revised Code, or state criminal law with the exception of traffic offenses and offenses in which the resident of the parcel is a crime victim, provided that: an ongoing and uninterrupted violation shall be deemed to have been committed only on the last day during which all the necessary elements of the violation existed; multiple violations committed within any twenty-four-hour period of time on or in the same parcel shall be considered a single separate violation, irrespective of whether the violations are otherwise related to each other by some underlying unity of purpose or scheme; and violations that are first reported to a city police or code enforcement officer by a person having an ownership or leasehold interest in any parcel, or having a contractual obligation to manage such parcel, or occupying such parcel shall not be deemed violations under this chapter. It is not necessary that a criminal prosecution has been initiated in order to establish that a violation has occurred.

Commented [WL5]: The definition of separate violation and public nuisance are proposed to be combined and streamlined in the revised ordinance.

The remedies provided in this chapter shall be civil and remedial in nature except that, if any person knowingly fails or refuses to abide by a temporary or permanent abatement order issued by the municipal court under the provisions of this chapter, such person shall be guilty of a misdemeanor.

10-2.5-3. - Nature of Remedies.

The remedies provided in this chapter shall be civil and remedial in nature except that, if any person knowingly fails or refuses to abide by a temporary or permanent abatement order issued by the municipal court under the provisions of this chapter, such person shall be guilty of a misdemeanor.

Commented [LW6]: This section has been moved to 10-2.5-8 and the language clarified.

10-2.5-4. Nuisance Prohibited.

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

Commented [LW7]: This section has been renamed to "Owner Responsibility" under 10-2.5-3. Additional language has been added to include chronic nuisance, among other things.

10-2.5-5. Procedures in General.

- (a) The municipal court is vested with the jurisdiction, duties and powers to hear and decide all causes arising under this chapter, and to provide the remedies specified herein.
- (b) Any civil action commenced pursuant to the provisions of this chapter shall be in the nature of a special statutory proceeding. All issues of fact and law in such civil actions shall be tried to the court without a jury. No equitable defenses may be set up or maintained in any such action except as provided specifically in this chapter. Injunctive remedies under this chapter may be directed toward the parcel or toward a particular person.
- (c) Public nuisances as defined by this chapter shall be strict liability violations. No culpable mental state shall be required to establish a public nuisance under this chapter or to obtain court approval for remedies provided by this chapter. However, if a separate violation is used by the city to establish the existence of a public nuisance that has not been previously adjudicated, all of the elements of such separate violation, including any culpable mental state required for the commission of such separate violation, must be established by the city

by a preponderance of the evidence at the trial on the merits of any civil action commenced pursuant to the provisions of this chapter.

- (d) Proceedings pursuant to the provisions of this chapter shall generally be governed by the Colorado Rules of County Court Civil Procedure unless this chapter provides a more specific rule, provided, however, that with respect to the rules related to injunctions, Rule 65 of the Colorado Rules of Civil Procedure shall control rather than Rule 365 of the Colorado Rules of County Court Civil Procedure. Where this chapter, the Colorado Rules of Civil Procedure or the Colorado Rules of County Court Civil Procedure fail to state a rule of decision, the court shall first look to the Public Nuisance Abatement Act, § 16-13-301, et seq., C.R.S., and the cases decided thereunder.
- (e) Actions pursuant to the provisions of this chapter shall be filed by the office of the city attorney for the city or by such other legal council as the city attorney may designate to represent the city.
- (f) In the event that the city pursues any criminal penalties provided in any other section of this code, any other civil remedies or the remedies of any administrative action, the remedies in this chapter shall not be delayed or held in abeyance pending the outcome of any proceedings in the criminal, civil or administrative action, or any action filed by any other person, unless all parties to the action initiated pursuant to this chapter agree otherwise.
- (g) An action brought pursuant to the provisions of this chapter may be consolidated with another civil action brought pursuant to the provisions of this chapter that involves the same parcel of real property. However, such actions shall not be consolidated with any other civil or criminal action except upon the stipulation of all parties. No party may file any counterclaim, cross-claim, third-party claim or setoff of any kind in any action pursuant to the provisions of this chapter.

10-2.5-6. Required Procedures Prior to Commencement of Public Nuisance Action.

- (a) No action shall be brought pursuant to the provisions of this chapter until the following procedures have been utilized:
 - (1) Following the first violation that serves as the basis for a nuisance abatement action, written notice of violation shall be given by the city manager to the owner of the parcel at which the nuisance conditions occurred.
 - (A) The notice shall be personally served upon the owner or served by certified mail to the parcel, addressed to the owner by name, mailed to the owner by name at any different address of the owner as shown in the records of the Boulder County Assessor or of the Boulder County Clerk and Recorder. Personal service or service by mail shall be given no later than thirty days following the date of the violation.
 - (B) The notice shall specify the nature of the nuisance, the date or dates of the nuisance and the provision of the Boulder Revised Code that was violated. When a nuisance occurred at a multi-unit building, the city manager shall identify the unit or units involved in the problem.

Commented [WL8]: The revised ordinance includes strict liability, which now includes chronic nuisance, under 10-2.5-4, Procedures in General. Other than adding chronic nuisance, this language is the same and is the most common mental state for nuisance violations.

Commented [LW9]: New subsections on burden of proof and quasi judicial hearing rules have been added to clarify that the quasi judicial hearing rules apply in cases of administrative remedies and appeals; and to state the burden of proof clearly for criminal and civil cases.

Commented [LW10]: Section has been amended and clarified into:

10-2.5-5 Notices for public nuisance
 10-2.5-6 Notices for chronic nuisance
 10-2.5-7 Abatement agreement for chronic nuisance property

- (C) The city manager shall also send copies of the notice to tenants or others if, in the judgment of the city manager, notice to such additional persons will assist in abatement of nuisance conditions.
- (D) The notice may be accompanied by educational materials which, in the judgment of the city manager, will be of assistance to responsible parties in abating and avoiding nuisance conditions.
- (E) No notice shall be given pursuant to this provision, nor shall any event be utilized as a “first incident” for the purpose of bringing a nuisance abatement action, unless the city manager determines that such incident properly could serve as the basis of the filing of a criminal case in municipal court.
- (2) Following a second violation within a twelve-month period, or a third violation within a twenty-four-month period, but prior to the filing of a nuisance abatement action based upon those violations, the city manager shall schedule a settlement meeting involving all persons who will be named as party-defendants in any nuisance abatement proceeding based upon those incidents.
 - (A) No meeting shall be set up based upon any incident unless the city manager, in the exercise of due diligence, determines that there is reasonable cause to believe that a violation or problem that could trigger the nuisance abatement process has occurred.
 - (B) Notice of the meeting may be given by personal service, by first class mail confirmed by a telephonic communication with the person to whom notice is provided, or by any other means so long as it can be established that notice of the meeting was actually received by the party to whom such notice was provided. Notice shall be provided within thirty days of the date of the final violation that serves as the basis for the meeting.
 - (C) Landlords, tenants, residents and others whose corrective action is deemed necessary by the city manager in order to resolve nuisance conditions will be asked to attend the settlement meeting. Owners of rental properties may participate in such meetings through representatives legally authorized to enter into voluntary compliance agreements on behalf of those owners.
 - (D) Neighbors, victims and others may also be invited to attend such meetings. However, attendance of such persons will not be required. When victims and impacted neighbors do not choose to attend such meetings, the city manager will attempt to determine the impact of nuisance conditions upon such persons and present that information at the meeting.
 - (E) The scheduling, location and format of settlement meetings will be determined by the city manager in a manner that the city manager believes will be best suited resolving the problem. The city manager may utilize mediators, facilitators and other experts (including community volunteers) to assist in the resolution of the problem.
 - (F) The desired outcome of the settlement meeting will be to obtain a voluntary compliance agreement, in which relevant parties agree to take corrective action to abate and avoid nuisance conditions.

Commented [LW11]: With the addition of chronic nuisance, this section is proposed to be changed. Chronic nuisance will cover repeat violations over a certain threshold at one property, and public nuisance covers nuisance charges. With settlement meetings not accomplishing the goal of addressing chronic violators, staff suggests using quasi judicial hearings for administrative remedies and the municipal court for any civil or criminal proceedings.

Commented [LW12R11]: This could be said better.... Any ideas?

Commented [AN13R11]: The timeliness and involvement of multiple roles uncharged for nuisance violations have made this process too cumbersome. It has taken months to years to complete in the past with unsatisfactory results reported by participants. As a result, the settlement meeting process has been removed in an effort to define and streamline chronic nuisance.

(G) If no voluntary compliance agreement is achieved or, if such agreement is achieved and thereafter the city manager determines that a party has failed to comply with the terms of such agreement to the city manager's sole satisfaction, or if an owner fails to attend a scheduled settlement meeting to which they have been invited, the matter may be referred to the city attorney for evaluation and potential filing of a nuisance abatement action. Proof of violation of the voluntary compliance agreement shall not be required to establish the existence of a public nuisance.

(b) Upon receipt of a referral for nuisance abatement, the city attorney shall evaluate the case and determine whether or not to initiate a court action. In evaluating such a case, the city attorney may consider, without limitation, the following factors:

- (1) The level of cooperation of potential parties in attempting to resolve issues;
- (2) The level of disturbance associated with the violations and the impact of those violations upon neighbors or other victims;
- (3) The degree to which potential parties to the nuisance abatement action have taken reasonable steps to try and resolve the problem;
- (4) The existence or nonexistence of prior cases or incidents in which potential parties to a nuisance abatement action have been involved and the nature of that involvement;
- (5) The percentage of units in a multi-unit housing context in which problems have occurred;
- (6) The existence or nonexistence, within a multi-unit housing context, of a condominium association or other internal governing body or management structure that might provide an avenue for relief of the problem and the probability that such governing body or management structure will be able to resolve the problem;
- (7) The existence of any equitable, factual, legal, ethical or other consideration of the type that would normally be considered by an attorney when deciding whether or not to file a civil action;
- (8) The availability of resources required for the prosecution of the potential case;
- (9) The availability of any other enforcement tools that might be better suited to resolution of the particular problem; and
- (10) The probability of prevailing at a trial on the matter.

(c) Notwithstanding the settlement meeting and case evaluation procedures described in subsections (a)(2) and (b) above, the city manager may request that the city attorney file a nuisance abatement action immediately if, in the city manager's judgment, facts exist to support a sworn statement that a public nuisance posing an immediate threat to the public safety is in existence as a result of the condition or use of parcel in question. The city attorney shall file such an action only if he or she concurs with the city manager's request. The city manager and city attorney may consult with the city council on such actions. For the purposes of this subsection (c), *threat to the public safety* shall include only those violations that involve actual or threatened physical violence directed at persons or animals,

Commented [LW14]: This section has been removed, however, similar factors are included in two subsections in the ordinance:

10-2.5-11. - Administrative Remedies.

10-2.5-13. - Remedies for Civil Abatement Action.

Commented [LW15]: A similar version of this may be found in the new ordinance, 10-2-6(g).

substantial property damage or other specific acts that harm or threaten to harm human health or human safety.

10-2.5-7. Commencement of Public Nuisance Actions; Prior Notification.

Commented [WL16]: This section is proposed to be expanded to include chronic nuisance and the language clarified in the new ordinance and is now found at 10-2.5-12.

- (a) Notification is required before filing civil actions pursuant to the provisions of this chapter as follows:
 - (1) At least ten calendar days before filing a civil action pursuant to the provisions of this chapter, a notice to the owner and occupants of the parcel shall be posted at some prominent place on the parcel. A notice shall also be mailed to the owner of the parcel. The mailing of the notice shall be deemed sufficient if mailed by certified mail to the owner at the address shown of record relating to the parcel for such owner in the records of the Boulder County Assessor. The posted and mailed notices shall state that the parcel has been identified as the location of an alleged public nuisance and that a civil action pursuant to the provisions of this chapter may be filed.
 - (2) Agents of the city are authorized to enter upon the parcel for the purpose of posting these notices and to affix the notice in any reasonable manner to buildings and structures.
 - (3) The city shall not be required to post or mail any notice specified herein before filing a civil action if it determines that any of the following conditions exist; however, the city will provide such notice as soon as reasonable possible after filing a civil action, and, if notice has not been provided earlier, shall provide such notice before any fine or other liability is imposed:
 - (A) The public nuisance poses an immediate threat to public safety;
 - (B) Notice would jeopardize a pending investigation of criminal or public nuisance activity, confidential informants or other police activity; or
 - (C) Any other emergency circumstance exists.
- (b) An action pursuant to the provisions of this chapter shall be commenced by the filing of a verified complaint or a complaint verified by an affidavit, which may be accompanied by a motion for a temporary abatement order, through and in the name of the city attorney. Any complaint filed pursuant to Subsection 10-2.5-6(c) without a settlement meeting or case evaluation shall include an affidavit or declaration attesting under penalty of perjury to the facts establishing the immediate threat to public safety.
 - (1) The parties-defendant to an action commenced under the provisions of this chapter and the persons liable for the remedies provided by this chapter may include the parcel of real property itself, any person owning or claiming any ownership or leasehold interest in the parcel, all tenants and occupants of the parcel, all managers and agents for any person claiming an ownership or leasehold interest in the parcel, any person committing, conducting, promoting, facilitating or aiding in the commission of a public nuisance, and any other person whose involvement may be necessary to abate the nuisance, prevent it from recurring, or to carry into effect the court's orders. None of these parties shall be deemed necessary or indispensable parties. Any person holding any legal or equitable interest in the parcel who has not been named as a party-defendant may intervene as a party-defendant. No other person may intervene.

- (2) The parties-defendant shall be served as provided in the Colorado Rules of Civil Procedure for other civil actions except as otherwise provided in this chapter.
- (3) The summons, complaint and, if applicable, temporary abatement order shall be served upon the real property itself by posting copies of the same in some prominent place on the parcel.

10-2.5-8. Effect of Abatement Efforts; Defense to Action.

- (a) If a person named as a party-defendant is the owner of a parcel of real property and is leasing the parcel to one or more tenants, or the person named has been hired by the owner of the parcel to manage and lease the parcel, and the separate violations which constitute the alleged public nuisance were committed by one or more of the tenants or occupants of the parcel, it shall be a defense to an action pursuant to the provisions of this chapter that said person has:
 - (1) Evicted, or attempted to evict by commencing and pursuing with due diligence appropriate court proceedings, all of the tenants and occupants of the parcel that committed each of the separate violations that constitute the alleged public nuisance; and
 - (2) Has, considering the nature and extent of the separate violations, undertaken and pursued with due diligence, reasonable means to avoid a recurrence of similar violations on the parcel by the present and future tenants or occupants of the parcel.
- (b) The defenses set forth in subsection (a) above shall not be available to any person who fails to attend a settlement meeting set up by the city manager prior to the filing of a nuisance abatement action.
- (c) If, in the judgment of the city manager, a person who has received a notice of violation has established sufficient grounds to assert a defense to an action under subsection (a) above, the separate violation which was the subject of the notice of violation shall no longer be considered a separate violation within the meaning of this chapter. Nothing herein shall be construed to prohibit the introduction of evidence of said separate violation at a subsequent court proceeding, if a public nuisance action is commenced on the basis of additional separate violations, for the purpose of determining whether the defendants named in such action have undertaken and pursued with due diligence reasonable means to avoid a recurrence of similar violations on the parcel of real property by the present and future tenants or occupants of the parcel.
- (d) Except as provided in subsection (a) above, the fact that a defendant took steps to abate the public nuisance after receiving the notice of its existence does not constitute a defense to an action brought pursuant to the provisions of this chapter.

10-2.5-9. Court Directed Settlement Procedure.

- (a) After a nuisance abatement action is filed pursuant to the provisions of this chapter, any party may file with the court clerk and serve a request for a court settlement conference, together with a notice for setting of such request. The court shall grant such request if, in its judgment, a settlement conference is appropriate under the particular circumstances. The court shall not grant any such request over the objection of the city attorney if the action is

Commented [WL17]: This section has been amended and moved in the new ordinance to 10-2.5-17.

Commented [WL18]: This has been changed to an abatement agreement. If a property owner, etc, works with the city on an abatement agreement and addresses the problem, it is a defense to action taken under this Chapter.

Commented [WL19]: This section has been removed. A nuisance violator may already work with staff before getting to the court stage through an abatement agreement. Additionally, the court has the power to balance the arguments on both sides to come to a fair and equitable decision.

Commented [WL20R19]: Note: Check to see if this provision has been used. If not or it has been used rarely, note that here.

Commented [AN21R19]: It has been used but I would speak to the time and participation requirements being unwieldy. May be able to use comments I posted above better here.

filed pursuant to Subsection 10-2.5-6(c) due to the city manager's determination of an immediate threat to public safety.

- (b) At any time prior to trial, the court may, without a request of the parties, order that a settlement conference be held.
- (c) Any settlement conference held pursuant to the provisions of subsections (a) or (b) above shall be conducted as follows:
 - (1) The court settlement conference shall, if the request is granted, be conducted by any available judge other than the judge assigned to handle a trial in the matter, or by such other settlement officer, referee or mediator as may be selected by the court for such purpose.
 - (2) All discussions at the settlement conference shall remain confidential and shall not be disclosed to the judge who presides at trial.
 - (3) Statements at the settlement conference shall not be admissible evidence for any purpose at the trial of the matter or in any other proceeding.
- (d) Settlement conferences, when held, shall be provided without special costs to the parties except in the following circumstances:
 - (1) With court approval, the parties may agree to retain the services of a particular mediator or settlement officer to assist with settlement discussions. In this event, the parties must agree to pay for the services of such outside settlement facilitator and must agree about the terms of such payment.
 - (2) In the event that any party failed to participate in a pre-filing settlement meeting pursuant to the provisions of paragraph 10-2.5-6(a)(2), B.R.C. 1981, the court may order such party to pay up to one-half of the reasonable costs or value of court-ordered settlement procedures.

10-2.5-10. Abatement Orders.

- (a) Issuance and Effect of Temporary and Permanent Abatement Orders: The issuance of temporary or permanent abatement orders under this chapter shall be governed by the provisions of Rule 65 of the Colorado Rules of Civil Procedure pertaining to temporary restraining orders, preliminary injunctions and permanent injunctions, except to the extent of any inconsistency with the provisions of this chapter, in which event the provisions of this chapter shall prevail. Temporary abatement orders provided for in this chapter shall go into effect immediately when served upon the property or party against whom they are directed. Permanent abatement orders shall go into effect as determined by the court. No bond or other security shall be required of the city.
- (b) Form and Scope of Abatement Orders: Every abatement order under this chapter shall set forth the reasons for its issuance; shall be reasonably specific in its terms; shall describe in reasonable detail the acts and conditions authorized, required or prohibited; and shall be binding upon the parcel, the parties to the action, their attorneys, agents and employees and any other person named as a party-defendant in the public nuisance action and served with a copy of the order.

Commented [WL22]: This subsection is in the new ordinance under 10-2.5-18. The main proposed changes, aside from language clarification, are adding chronic nuisance to this section.

- (c) Substance of Abatement Orders: Temporary or permanent abatement orders entered pursuant to the provisions of this chapter shall be narrowly tailored to address the particular kinds of separate violations that form the basis of the alleged public nuisance. Such orders may include:
 - (1) Requiring any parties-defendant to take steps to abate the public nuisance;
 - (2) Authorizing the city manager to take reasonable steps to abate the public nuisance activity and prevent it from recurring, considering the nature and extent of the separate violations;
 - (3) Requiring certain named individuals to stay away from the parcel at all times or for some specific period of time;
 - (4) Issuing any order that is reasonably necessary to access, maintain or safeguard the parcel; and
 - (5) Issuing any order that is reasonably necessary for the purposes of abating the public nuisance or preventing the public nuisance from occurring or recurring; provided, however, that no such order shall require the seizure of, the forfeiture of title to, or the temporary or permanent closure of, a parcel, or the appointment of a special receiver to protect, possess, maintain or operate a parcel.
- (d) Temporary Abatement Orders:
 - (1) The purpose of a temporary abatement order shall be to abate temporarily an alleged public nuisance pending the final determination of a public nuisance. A temporary abatement order may be issued by the court pursuant to the provisions of this section even if the effect of such order is to change, rather than preserve, the status quo.
 - (2) At any hearing on a motion for a temporary abatement order, the city shall have the burden of proving that there are reasonable grounds to believe that a public nuisance occurred in or on the parcel and, in the case of a temporary order granted without notice to the party-defendants, that such order is reasonably necessary to avoid some immediate, irreparable loss, damage or injury. In determining whether there are such reasonable grounds, the court may consider whether an affirmative defense may exist under any of the provisions of this chapter.
 - (3) At any hearing on a motion for a temporary abatement order or a motion to vacate or modify a temporary abatement order, the court shall temper the rules of evidence and admit hearsay evidence unless the court finds that such evidence is not reasonably reliable and trustworthy. The court may also consider the facts alleged in the verified complaint or in any affidavit submitted in support of the complaint or motion for temporary abatement order.
- (e) Permanent Abatement Orders:
 - (1) At the trial on the merits of a civil action commenced under this chapter, the city shall have the burden of proving by a preponderance of the evidence that a public nuisance occurred on or in the parcel identified in the complaint. At such trial, the city must also prove, by a preponderance of the evidence, any separate violations asserted as grounds for the public nuisance action that have not been previously adjudicated. The Colorado Rules of Evidence shall govern the introduction of evidence at all such trials.

- (2) Where the existence of a public nuisance is established in a civil action pursuant to the provisions of this chapter after a trial on the merits, the court shall enter a permanent abatement order requiring the parties-defendant to abate the public nuisance and take specific steps to prevent the same and other public nuisances from occurring or recurring on the parcel or in using the parcel.
- (f) Violation of Abatement Order:
 - (1) No person shall fail to comply with any abatement order issued pursuant to the provisions of this chapter. Each day that a person is in violation of any such abatement order shall constitute a separate violation of these provisions.
 - (2) Whether or not a prosecution is brought pursuant to paragraph (1) of this subsection, the municipal court shall retain full authority to enforce its abatement orders by the use of its contempt powers. In a contempt proceeding brought as a result of violation of an abatement order issued pursuant to this chapter, the municipal court may, in its discretion, treat each day during which a party is in violation of an abatement order as a separate act of contempt.

10-2.5-11. Attorney's Fees.

- (a) Other than as specifically provided by this section, attorney's fees shall not be awarded to any party in a nuisance abatement proceeding brought pursuant to the provisions of this chapter.
- (b) Attorney's fees may be awarded at the discretion of the court under the following circumstances:
 - (1) Where there has been a judicial finding of the existence of a nuisance, as defined by the provisions of this chapter, whether such finding is made at trial or as part of a settlement in advance of a trial; and
 - (2) When the party found to be responsible for the nuisance failed to attend a settlement meeting set up by the city manager pursuant to paragraph 10-2.5-6(a)(2), B.R.C. 1981.

Commented [WL23]: This section is in the new ordinance under 10-2.5-22 and is proposed to include chronic nuisance in addition to public nuisance.

10-2.5-12. Motion to Vacate or Modify Temporary Abatement Orders.

- (a) Timing of Motion to Vacate Temporary Order: At any time a temporary abatement order is in effect, any party-defendant or any person holding any legal or equitable interest in any parcel governed by such an order may file a motion to vacate or modify said order. Any motion filed under this subsection (a) shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing.
- (b) Standard of Proof for Vacation of Temporary Order: The court shall vacate the order if it finds by a preponderance of the evidence that there are no reasonable grounds to believe that a public nuisance was committed in or on the parcel. The court may modify the order if it finds by a preponderance of the evidence that such modification will not be detrimental to the public interest and is appropriate, considering the nature and extent of the separate violations.
- (c) Continuance of Hearing: The court shall not grant a continuance of any hearing set under this section unless all the parties so stipulate.

Commented [WL24]: This section is in the new ordinance under 10-2.5-19 and is proposed to include chronic nuisance in addition to public nuisance.

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

10-2.5-13. Civil Judgment.

In any case in which a public nuisance is established, in addition to a permanent abatement order, the court may impose a separate civil judgment on every party-defendant who committed, conducted, promoted, facilitated, permitted, failed to prevent or otherwise let happen any public nuisance in or on the parcel that is the subject of the public nuisance action. This civil judgment shall be for the purpose of compensating the city for the costs it incurs in pursuing the remedies pursuant to the provisions of this chapter, and shall not be punitive in nature. For the purpose of this section, costs include expenses of the type detailed in § 13-16-122, C.R.S.

Commented [WL25]: This section has been included into the new 10-2.5-13, Remedies for Civil Abatement Action, and is proposed to include considerations for the court in determining if an additional civil judgment should be imposed. This has also been expanded to include both chronic and public nuisances.

10-2.5-14. Supplementary Remedies for Public Nuisances.

In any action filed under the provisions of this chapter, in the event that any one of the parties fails, neglects or refuses to comply with an order of the court, the court may, upon the motion of the city, in addition to or in the alternative to the remedy of contempt and the possibility of criminal prosecution, permit the city to enter upon the parcel of real property and abate the nuisance, take steps to prevent public nuisances from occurring, or perform other acts required of the defendants in the court's orders.

Commented [WL26]: This section remained the same except that it is proposed to include chronic nuisance in addition to public nuisance.

10-2.5-15. Stipulated Alternative Remedies.

- (a) The city and any party-defendant to an action pursuant to the provisions of this chapter may voluntarily stipulate to orders and remedies, temporary or permanent, that are different from those provided in this chapter.
- (b) The court shall make such stipulations for alternative remedies an order of the court and they shall be enforceable as an order of the court.

Commented [WL27]: This section remained the same.

10-2.5-16. Remedies Under Other Laws Unaffected.

Nothing in this chapter shall be construed as limiting or forbidding the city or any other person from pursuing any other remedies available at law or in equity, or requiring that evidence or property seized, confiscated, closed, forfeited or destroyed under other provisions of law be subjected to the special remedies and procedures provided in this chapter.

Commented [WL28]: This section remained the same.

10-2.5-17. Limitation of Actions.

Actions pursuant to the provisions of this chapter shall be filed no later than one year after the final public nuisance incident that serves as the basis for the bringing of an action pursuant to this chapter. This limitation shall not be construed to limit the introduction of evidence of any other separate violations that occurred more than one year before the filing of the complaint for the purpose of establishing the existence of a public nuisance or when relevant for any other purpose.

Commented [WL29]: This section is in the new ordinance under 10-2.5-20 and is proposed to include chronic nuisance in addition to public nuisance, with specific clarification around chronic nuisance.

10-2.5-18. Effect of Property Conveyance.

When title to a parcel is conveyed from one person to another, any separate violation existing at the time of the conveyance which could be used under this chapter to prove that a public nuisance exists with respect to such parcel, shall not be so used unless a reason for the

Commented [WL30]: This section is in the new ordinance under 10-2.5-21 and is proposed to include chronic nuisance in addition to public nuisance.

conveyance was to avoid the parcel being declared a public nuisance pursuant to the provisions of this chapter. It shall be a rebuttable presumption that a reason for the conveyance of the parcel was to avoid the parcel from being declared a public nuisance pursuant to the provisions of this chapter if: a) the parcel was conveyed for less than fair market value; b) the parcel was conveyed to an entity or entities controlled directly or indirectly by the person conveying the parcel; or c) the parcel was conveyed to a relative of the person conveying the parcel.

Commented [WL31]: A new subsection is proposed to the end of the new ordinance to permit the city manager to develop rules to administer this section.

Chapter 10-3 Rental Licenses

10-3-3. - Terms of Licenses.

- (a) License terms shall be as follows:

Licenses, other than reduced term licenses issued under Section 10-3-4, "Reduced Term License," B.R.C. 1981, or temporary licenses issued under Section 10-3-9, "Temporary License Appeals," B.R.C. 1981, shall expire four years from issuance or when ownership of the licensed property is transferred.

- (b) In addition to any other applicable requirements, new licenses and renewals shall require that the licensee submit to the city manager a complete application packet for the license, on forms provided by the manager. The application shall satisfy the following requirements:

Commented [WL32]: This section is proposed to have proof that any license application for a specific property not have current, existing violations of 10-2.5, generally.

- (1) A current rental inspection report (for a new license except as set forth in Section 10-3-5, "License Procedure for Newly Constructed Rental Property," B.R.C. 1981,) certifying compliance with those portions of Chapter 10-2, "Property Maintenance Code," and Section 9-9-16, "Lighting, Outdoor," B.R.C. 1981, for which the report form requires inspection and certification; and
- (2) The operator shall certify on the application forms provided by the manager that the operator has a current valid contract with a commercial trash hauler for removal of accumulated trash from the licensed property in accordance with Subsection 6-3-3(b), B.R.C. 1981; and

- (c) The city manager shall issue separate licenses for individual buildings. Such licenses shall cover all dwelling units and rooming units within such buildings. In a building containing attached but individually owned dwelling units, or any other dwelling units which may be separately conveyed, the city manager shall issue separate licenses for each dwelling unit. A structure, or group of structures, shall be considered to be a single building if it has been assigned a single street address by the City. If a complex of buildings on one property is under common ownership, and this owner is willing to have a common expiration date for the licenses for all dwelling and rooming units, the city manager may consider the whole complex to be the equivalent of a single building for the purposes of licensing and the fee schedule in Section 4-20-18, "Rental License Fee," B.R.C. 1981.

- (d) Whenever an existing license is renewed, the renewal license shall be effective from the date of expiration of the last license if the applicant submits a complete renewal application by or within ninety days from the expiration date.
- (e) Issuance of any license (new or renewed) requires meeting the energy efficiency requirements of Chapter 10-2, "Property Maintenance Code, Appendix C - Energy Efficiency Requirements," B.R.C. 1981.

10-3-4. - Reduced Term License.

- (a) The city manager shall issue a reduced term license whenever the city manager determines that:
 - (1) Violations of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, revealed during an inspection, individually or in combination, demonstrate a failure to maintain the rental property in a safe, sanitary and clean condition so that the dwelling endangers the health and safety of the occupants;
 - (2) There is or has been a violation of a limitation on numbers of occupants or numbers of dwelling units found in Title 9, "Land Use Code," B.R.C. 1981, which demonstrates a failure to maintain the rental property in compliance with that title; or
 - (3) Violations of Section 9-9-16, "Lighting Outdoor," B.R.C. 1981, of a building or complex of buildings on the same property with multiple dwelling units that are all held under common ownership, revealed during an inspection or otherwise, demonstrate a failure to maintain the rental property in compliance with Title 9, "Land Use Code," B.R.C. 1981
- (b) The terms of a reduced term license shall be as follows:
 - (1) For violations of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, the license term shall be reduced to twenty-four months.
 - (2) For violations of Title 9, "Land Use Code," B.R.C. 1981, the license term shall be reduced to twelve months. A reduced term license issued to allow the operator to bring the rental property into compliance with Section 9-9-16, "Lighting Outdoor," B.R.C. 1981, may only be issued one time.
- (c) The city manager may issue a reduced term short-term rental license if the operator has received a penalty, suspension or other order pursuant to Section 10-3-16(a), "Administrative Remedy," B.R.C. 1981.
- (d) If an operator disagrees with the decision of the city manager to issue a reduced term license under subsection (a) of this section, such person may appeal the city manager's decision within thirty days after the issuance of the reduced term license, as follows:
 - (1) For reduced term licenses issued as a result of violations of Chapter 10-2, "Property Maintenance Code," B.R.C. 1981, the appeal shall be made as provided in Section 10-2-2, Section 111, "Means of Appeal," B.R.C. 1981.

Commented [WL33]: This section, subsection (b), and (d) are proposed to include violations of 10-2.5 over the past two years. If violations have occurred, then the license is reduced to a one-year license to continue monitoring any situations at that property.

Commented [WL34]: This subsection is proposed to be expanded to include violations of 10-2.5.

Commented [WL35R34]: @Bennett, Kevin This comment and the one above should address the area that was changed related to reduced term licenses. Let me know if you have any additional questions.

- (2) For reduced term licenses issued as a result of violations of Title 9, “Land Use Code,” B.R.C. 1981, the appeal shall be made to the board of zoning adjustment, although the fee amount shall be as specified for an appeal to the board of building appeals.

...

10-3-14. - Local Agent Required.

Whenever any rental property is required to be licensed under this chapter, and neither the owner nor the operator is a natural person domiciled within Boulder County, Colorado, the owner shall appoint a natural person who is capable of responding to the property within sixty minutes, to serve as the local agent of the owner and the operator for service of such notices as are specified in Section 10-2-2, “Property Maintenance Code,” Section 108, “Unsafe Structures and Equipment,” and Section 109, “Emergency Measures,” B.R.C 1981, and notices given to the local agent shall be sufficient to satisfy any requirement of notice to the owner or the operator. The owner shall notify the city manager in writing of the appointment within five days of being required to make such an appointment, and shall thereafter notify the city manager of any change of local agent within fifteen days of such change.

...

10-3-16. - Administrative Remedy.

- (a) If the city manager finds that a violation of any provision of this chapter, Chapter 10-2, “Property Maintenance Code,” B.R.C. 1981, exists, the manager, after notice to the operator and an opportunity for hearing under the procedures prescribed by Chapter 1-3, “Quasi-Judicial Hearings,” B.R.C. 1981, may take any one or more of the following actions to remedy the violation:

- (1) Impose a civil penalty according to the following schedule:

(A) For any violation in the following areas or of affordability standards: The area south of Arapahoe Avenue, north of Baseline Road, east of 6th Street and west of Broadway, the area south of Baseline Road, north of Table Mesa Drive, east of Broadway and west of U.S. Route 36 and the area south of Canyon Boulevard, north of Arapahoe Avenue, west of Folsom Street and east of 15th Street or for any violation of affordability standards for an affordable accessory unit approved under Subsection 9-6-3(n), B.R.C. 1981:

- (i) For the first violation of the provision, \$500;
- (ii) For the second violation of the same provision, \$750; and
- (iii) For the third violation of the same provision, \$1,000;

(B) For a violation in any other area:

- (i) For the first violation of the provision, \$150;
- (ii) For the second violation of the same provision, \$300; and

Commented [WL36]: This section is proposed to be amended to include notices for violations of 10-2.5.

Commented [WL37]: This subsection is proposed to include violations of 10-2.5.

Commented [WL38]: This section is proposed to be removed as it does not align with current City values. All violations are proposed to be under the civil penalty structure outlined in subsection (B).

(iii) For the third violation of the same provision, \$1,000.

- (2) Revoke the rental license;
 - (3) If the city manager finds that a short-term rental license was issued to a licensee who is determined not to comply with subsections (1), (2) or (3) of Section 10-3-19(c), "Short-Term Rentals," B.R.C. 1981, the city manager shall revoke the short-term rental license; and
 - (4) Issue any order reasonably calculated to ensure compliance with this chapter, and Chapter 10-2, "Property Maintenance Code," B.R.C. 1981.
- (b) If the city manager finds that an affordable accessory unit was advertised, offered for rent or rented for an amount in excess of the affordability standard, in addition to the actions the manager may take under subsection (a), the manager shall impose a penalty equal to the amount charged in excess of the affordability standard during the term of the license, plus interest at the rate of twelve percent per annum, and shall pay such funds collected to the tenant who was charged in excess of the affordability standard.
- (c) If notice is given to the city manager by the operator at least forty-eight hours before the time and date set forth in the notice of hearing on any violation that the violation has been corrected, the manager will reinspect the building. If the manager finds that the violation has been corrected, the manager may cancel the hearing.
- (d) The city manager's authority under this section is in addition to any other authority the manager has to enforce this chapter, and election of one remedy by the manager shall not preclude resorting to any other remedy as well.
- (e) The city manager may, in addition to taking other collection remedies, certify due and unpaid charges to the Boulder County Treasurer for collection as provided by Section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981.
- (f) To cover the costs of investigative inspections, the city manager will assess operators a \$250 fee per inspection, where the city manager performs an investigative inspection to ascertain compliance with or violations of this chapter.
- (g) The city manager shall not accept a new application from the same licensee for the same dwelling unit or units after revocation of a license:
- (1) For at least six months following the revocation; and
 - (2) Unless the applicant demonstrates compliance with all licensing requirements.

...

10-3-20. - Occupancy.

- (a) Every operator of any property with fewer than five dwelling units, shall at the time any dwelling unit is shown to any prospective renter, post conspicuously on the inside of the main entrance to each dwelling unit a sign listing a maximum occupancy number that shall be no greater than the maximum number of unrelated individuals permitted under Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981 in a form specified by the city

Commented [WL39]: A new proposed subsection (d) is proposed here to respond to an administrative concern around reconsiderations. The language is:

(d) A license holder affected by the legal occupancy determination may file with the city manager a written request for reconsideration. Such request shall be filed within fourteen (14) days of such determination and shall set forth the facts and any evidence supporting the legal occupancy asserted by the licensee. The city manager shall respond to the request within thirty (30) days of the written request. The original determination shall remain in effect during the reconsideration period.

manager. Any such sign may include an occupancy limit smaller than that allowed by Section 9-8-5.

- (b) Each license shall include a notation of the legal occupancy, including the number of unrelated individuals permitted for each dwelling unit covered by the license. Acceptance of the license shall constitute a waiver of any claim for a non-conforming occupancy in excess of the occupancy stated on the license. The notation on the license shall also not provide the basis for an assertion of non-conforming occupancy.
- (c) Each advertisement for rental shall include a statement of the maximum occupancy, such statement shall include a number no greater than the number of unrelated individuals permissible pursuant to Section 9-8-5, B.R.C. 1981, of the dwelling unit to be rented. Any such advertisement may include an occupancy limit smaller than that allowed by Section 9-8-5.



COVER SHEET

MEETING DATE

April 25, 2024

AGENDA ITEM

Zoning for Affordable Housing Phase II

PRIMARY STAFF CONTACT

Karl Guiler, Policy Advisor Senior

ATTACHMENTS:

Description

- ▣ **Item 2 - Zoning for Affordable Housing Phase II**



STUDY SESSION MEMORANDUM

TO: Mayor and Members of City Council

FROM: Nuria Rivera-Vandermyde, City Manager
Brad Mueller, Director of Planning & Development Services
Charles Ferro, Senior Planning Manager
Karl Guiler, Senior Policy Advisor

DATE: April 25, 2024

SUBJECT: Zoning for Affordable Housing Phase Two - Update and Discussion

EXECUTIVE SUMMARY

The purpose of this memorandum is to provide an update on the [Zoning for Affordable Housing Land Use Code Update Project](#), which has entered a second phase at the request of council. Staff is sharing analysis of the additional suggested options offered by council in Sep. 2023 to achieve more housing opportunities in the city. Staff is also seeking further direction from the City Council about which specific changes should be explored further and integrated into a proposed ordinance.

Following the study session discussion, staff intends to refine the options, engage the community on the proposed options, and receive input from the Planning Board and Housing Advisory Board before returning to City Council. A draft Project Charter for Zoning for Affordable Housing Phase Two is provided for council review in [Attachment A](#), which outlines the scope, goals, objectives, and timeline for the project along with community engagement strategies.

Key findings from the detailed land use analysis of the suggested options indicate there are pathways to more housing opportunities in the lower density zoning districts while still complying with the maximum density limitations in the [Boulder Valley Comprehensive Plan \(BVCP\)](#). The BVCP states that an average density will be maintained for a designation but assumes “*variations of the densities on a small area basis within any particular designation.*”(Chapter IV on Residential Categories, p. 105). That said, the intent of several policies in BVCP need to be considered. These include preserving neighborhood character and describing the subject areas as composed of “*predominantly single-family detached units*”. Since the BVCP notes an average

approach to calculating density, staff conducted an analysis of what the existing gross vs. net density would be for the RL-1, RR-1, and RR-2 zones and capacity for more units through zoning changes. The assumptions used for calculating gross and net density are described as follows:

- *Gross density* is a land area calculation of the zoning district (each polygon that defines a zone) that includes all public rights-of-way, parks, school properties and city-owned open space; and
- *Net density* or parceled density only includes the land area of individual properties with single-family homes (within each polygon) and excluding the other lands described above.

The data of these zoning analyses (including the RM-1 zone) are found in [Attachments B and C](#). Maps that show the number of lots that could be eligible for additional dwelling units under different scenarios are found in [Attachment D](#).

The first phase of the project, which was initiated by City Council as a 2022-2023 Work Program Item, entailed an ordinance changing the [land use code](#) to remove regulatory barriers to affordable or modest-sized housing to create more housing opportunities in the city. The intent was to address the ongoing housing crisis and rising costs of housing. Changes were specifically made to the site review process and standards on intensity (e.g., dwelling units per acre, floor area limitations), form and bulk (setbacks), parking, and subdivision standards. These changes were adopted by council in fall 2023 through [Ordinance 8599](#) and went into effect on Jan. 1, 2024.

QUESTIONS FOR CITY COUNCIL

Staff is seeking input from City Council on the scope and direction of the project before drafting an ordinance for consideration in Quarter Three of 2024. The following questions are provided to guide the council discussion:

1. Does City Council agree with the proposed project purpose, goals and objectives, and scope of the project as set forth in Attachment A?
2. Does City Council agree with the staff recommendations and if not, what changes does the council suggest? (See summary of staff recommendations on page 20.)
3. Which potential options should be analyzed further and be the focus of any further outreach and ordinance development?

BACKGROUND

On [Oct. 5, 2023](#), City Council voted unanimously to adopt [Ordinance 8599](#) on third reading, which removed regulatory barriers to affordable or modest-sized housing through changes to the site review process, intensity, form and bulk, use, parking, and subdivision standards. The changes adopted in the ordinance went into effect on Jan. 1, 2024.

At the [Sept. 21, 2023](#) second reading public hearing, several City Council members offered suggestions for additional changes to achieve more housing as a second phase of the project with more public outreach and analysis. The suggestions, listed below and considered Phase Two, are intended to serve as changes consistent with the current [BVCP](#). These options could be done without any updates to the BVCP to permit more density and/or address the city's housing needs. An information packet on this project was sent to council on [Feb. 1, 2024](#) as an update about the project and to provide new council members with the context of the project. Each suggestion is analyzed in the 'Analysis' section as follows.

Phase Two Suggestions from City Council

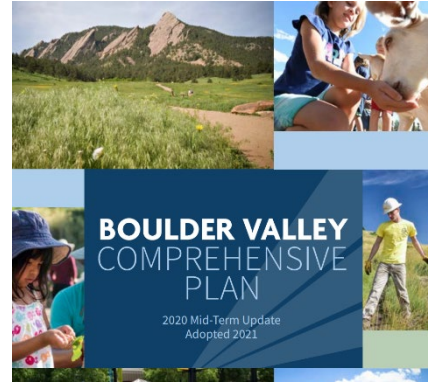
1. **Add RMX-1 (Mixed Density Residential – 1) to the scope of the project** – Explore changes to the RMX-1 zone that would apply the current floor area ratio (FAR) maximums per lot and remove the lot area per dwelling unit requirement.
2. **Add RM-1 (Medium Density Residential – 1) to the scope of the project** – Explore changes to the RM-1 zone that would remove the minimum open space per dwelling unit requirement and replace with the FAR limit of the RMX-1 zone.
3. **Opportunities for additional housing density in lower density areas** – Analyze density in low density areas in more depth and explore whether there are areas where additional density, consistent with the BVCP land use designations, may be possible (e.g., allowance for duplexes on corner lots along multi-modal corridors etc.) without any BVCP updates.
4. **Explore additional restrictions in low density residential zones to encourage home ownership** – Explore additional regulations to enable homeownership in low density residential zones and preservation of the character of such areas, such as owner-occupancy on lots where additional dwelling units may be allowed. This option was added based on concerns that investors may buy up properties and rent the homes if additional units are permitted.
5. **Exemption for “missing middle” housing** – Consider an exemption to the Site Review process for projects that provide 100% “missing middle” type housing if there are no land use modifications associated with the project. Solicit feedback on this type of housing and proposed changes from groups assisting/housing those with disabilities.
6. **Further analyze minimum thresholds for Site Review and whether any thresholds should be tied to number of dwelling units** – Consider changing additional zones in [Table 2-2 in Section 9-2-14, “Site Review,” B.R.C. 1981](#) to “0” to make them eligible for Site Review.

7. **Rethink whether research and development (R&D) uses should be incentivized by additional residential FAR in the industrial zones** – Consider removal of R&D uses from the allowance for additional residential FAR and list other light industrial uses that should be promoted for light industrial areas.

ANALYSIS

One of the requests from City Council as part of this project was to analyze the large areas of low density residential neighborhoods of the city, as well as the mixed and medium density areas, to determine if additional housing would be possible by changing zoning in a manner consistent with the [BVCP](#).

Changes to zoning would have to be found consistent with the descriptions and prescribed density of the BVCP land use designations. Page 105 of the BVCP notes the following regarding residential density (dwelling units per acre):



Land Use Category	Characteristics, Uses & BVCP Density/Intensity
Residential Categories Residential land uses on the BVCP Land Use Designation Map, for the most part, reflect the existing land use pattern or current zoning for an area. Many residential areas developed in the city and the county over the last 40 years are characterized by a mixture of housing types ranging from single-family detached to townhouses and apartments. A variety of housing types will continue to be encouraged in developing areas. Residential densities range from very low to high density. It is assumed that variations of the densities on a small area basis within any particular designation may occur, but an average density will be maintained for the designation. In certain residential areas, there is also the potential for limited small neighborhood shopping facilities, offices or services through special review.	

The passage emphasizes that “*a variety of housing types will continue to be encouraged in developing areas.*” This statement refers to zones that are not “established” and largely those that are not neighborhoods containing predominantly single-family dwellings. It also recognizes that “*variations of the densities on a small area basis within any particular designation may occur, but an average density will be maintained for the designation.*” This means that a small block or area within a land use designation might have a density that exceeds that of the designation (e.g., six dwellings per acre) but that because there are other areas lower in density within contiguous areas of the zone, the average would still comply with the maximum. An example of this would be a block in RL-1 that has 12 dwelling units per acre, exceeding the six dwelling units per acre maximum, that is still consistent since the density is less than six dwelling units per acre when averaged across contiguous areas of the zone.

The findings of the existing gross vs. net density analysis are that some additional housing capacity could be added even with the net density approach (refer to definitions of “net” and “gross” density on page 2). Using this approach, the low-density residential zones of the city could support a substantial increase in the amount of housing and still be consistent with the six dwelling units per acre maximum.

While an increase in density could be consistent with the BVCP's maximum density per land use designations, the BVCP also describes low density areas as "*predominantly single-family detached units.*" As discussed below, this policy intent must be taken into account in any policy direction on how many duplexes or other housing units may be permitted in these areas without changing the BVCP. Staff is seeking direction from council on the key issue related to how much housing should be added consistent with BVCP guidance. Analysis of each of the council suggestions for the project are described below:

City Council Suggestion –

1. Add RMX-1 (Mixed Density Residential – 1) to the scope of the project – Explore changes to the RMX-1 zone that would apply the current floor area ratio (FAR) maximums per lot and remove the lot area per dwelling unit requirement.

The RMX-1 zone district is largely found in portions of the Whittier, Newlands, University Hill, and Goss Grove neighborhoods around downtown as shown on Figure 1. RMX-1 comprises less than 2% of the city's land area. The BVCP designates these areas as Mixed Density Residential at a density of 6 to 20 dwelling units per acre. Goss Grove, University Hill, and the areas north and west of downtown have higher densities than areas in Whittier. The purpose of the RMX-1 in the land use code is stated as follows: "*Residential - Mixed 1: Mixed density residential areas with a variety of single-family, detached, duplexes, and multi-family units that will be maintained; and where existing structures may be renovated or rehabilitated.*"

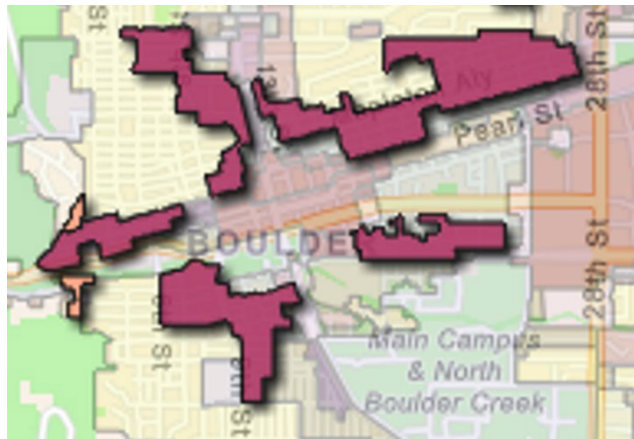


Figure 1- RMX-1 zone locations.

See [Attachment B](#) for land use maps showing both gross and net densities in these areas. RMX-1 is shown in the attachment in purple and indicates an existing diversity in density ranging from six to 13 dwelling units per acre (gross) and 10 to 18 dwelling units per acre (parceled; net).

RMX-1 areas are typically neighborhoods that were built in the late 19th to early 20th century with single-family homes that were rezoned to allow high density residential in the 1960s before being rezoned in 1997 to low density residential. The current density allowance is one dwelling unit per every 6,000 square feet, which is only slightly higher than the density allowed in the RL-1 zone (Residential Low – 1) at one dwelling unit per 7,000 square feet. Because of the rezoning, many of the areas of RMX-1 are

nonconforming to density and include a mix of single-family homes with multi-family residential projects.

The rezoning occurred due to concerns about older homes being demolished and rebuilt as apartment buildings that were found to be incompatible with the historic character of the neighborhood. Further, the reduction in density was in response to growing parking and traffic issues around the downtown. The BVCP describes this land use intent and history in the excerpt below:

Land Use Category	Characteristics, Uses & BVCP Density/Intensity
Mixed Density Residential (MXR)	<p>Characteristics and Locations: MXR areas surround downtown in the Pre-World War II older neighborhoods and are located in some areas planned for new development. Additionally, in older downtown neighborhoods that were developed with single-family homes but for a time were zoned for higher densities, a variety of housing types and densities are found within a single block. The city's goal is to preserve the current neighborhood character and mix of housing types and not exacerbate traffic and parking problems in those older areas. Some new housing units may be added.</p> <p>For areas designated for new development (outside of the Pre-WWII neighborhoods), the goal is to provide a substantial amount of affordable housing in mixed-density neighborhoods that have a variety of housing types and densities.</p> <p>Uses: Consists of single-family and multi-family residential units. May include some complementary uses implemented through zoning.</p> <p>BVCP Density/Intensity: 6 to 20 dwelling units per acre</p>

Alignment with BVCP: In the past, the land use code specified two types of zoning districts – established zones and redeveloping zones. Established zones were those where very little change was anticipated, whereas redeveloping zones were areas where growth and evolving character were expected. This terminology was removed in 2006 but has continued to inform zoning regulations to be consistent with the BVCP. Because of the established nature and history of the RMX-1 zone, staff did not suggest changes to RMX-1 as part of phase one of this project. Staff concerns remain that allowing additional density would result in development pressure leading to a loss of historic structures. There are also concerns that redevelopment may be out of character with the neighborhood and/or exacerbate parking and traffic impacts. Depending on the size of project, some may be able to build by-right without a discretionary review where there would be a greater level of scrutiny on the designs and potential impacts.

The option of requiring the same FAR for multi-family buildings as what is required for single-family homes in the RMX-1 zone would help to preserve the neighborhood character and scale. However, a FAR limit would not ensure that density would remain below 20 dwelling units per acre as specified in the BVCP.

If council supported moving forward with an increase in density in RMX-1, staff could modify the lot area per unit requirement from 6,000 to 3,000 square feet. This would allow a typical 6,000 square foot property that currently only allows a single-family dwelling to allow a duplex. Applying the FAR maximum to attached dwelling units and changing the lot area per dwelling unit calculation would be a reasonable way of achieving density near the downtown, encouraging conversion of existing historic homes

rather than demolition, and mitigating potential negative impacts. Additional units would still have to meet city off-street parking requirements. Impacts related to on-street parking will continue to be mitigated through the use of the city's neighborhood permit parking districts in many of the RMX-1 areas. Council should consider that the addition of more housing has the potential to increase the number of traffic trips in the neighborhoods.

Staff recommendation: Revise the RMX-1 standards to apply a FAR to attached dwelling units and adjust the intensity standard to be 3,000 square feet per dwelling unit. This would allow more medium density residential uses in walkable neighborhoods adjacent to downtown. Additional units would still meet off-street parking requirements.

City Council Suggestion

2. Add RM-1 (Medium Density Residential – 1) to the scope of the project – Explore changes to the RM-1 zone that would remove the minimum open space per dwelling unit requirement and replace with the FAR limit of the RMX-1 zone.

Medium density areas are found throughout the city and typically on the periphery of neighborhood centers and along transit corridors (see Figure 2 with medium density areas shown in the light orange color). RM-1 comprises roughly 3.5% of the city's land area.

Many of these areas were built in the 1970s and 1980s and have seen less redevelopment in recent years. The BVCP designates these areas as a Medium Density Residential land use, which permits six to 14 dwelling units per acre. Zoning analysis has shown that the existing gross density in these areas is roughly seven dwelling units per acre and net (parceled) is 8.5 dwelling units per acre. The purpose of the RM-1 in the land use code is stated as follows:

“Residential - Mixed 1: Medium density residential areas which have been or are to be primarily used for attached residential development, where each unit generally has direct access to ground level, and where complementary uses may be permitted under certain conditions.” See [Attachment C](#) for the more detailed zoning analysis of RM-1.

The maximum density specified in the BVCP land use designation and the RM-1 zone is 14 dwelling units per acre. While regulating with a FAR maximum would be simpler in implementation and could yield more housing in Medium Density Residential areas, there

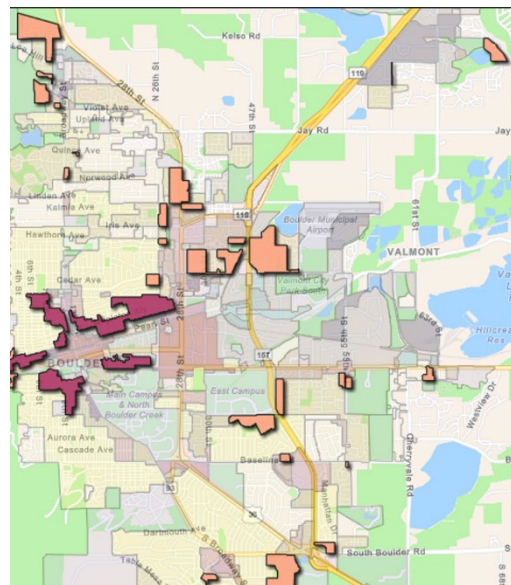


Figure 2- RM-1 zone locations (see light orange color).

would be no guarantee that the density would not exceed 14 dwelling units per acre with only with a FAR limit to regulate intensity of development.

The BVCP's Medium Density Residential description is below:

Medium Density Residential (MR)	<p>Characteristics and Locations: MR is characterized by a variety of housing types. Medium-density areas are generally situated near neighborhood and community shopping areas or along some of the major arterials of the city.</p> <p>Uses: Consists of a variety of housing types ranging from single-family detached to attached residential units such as townhomes, multiplexes and some small lot detached units (e.g., patio homes), not necessarily all on one site.</p> <p>BVCP Density/Intensity: 6 to 14 dwelling units per acre</p>
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Alignment with BVCP: An increase in housing in the RM-1 zone would continue to be consistent with the characteristics of the designation. However, eliminating the open space per dwelling unit requirement could allow for more than 14 dwelling units per acre, which would be inconsistent with the BVCP. Therefore, a density requirement would need to remain in the RM-1 zone to maintain BVCP consistency. Another consideration in the RM-1 zone is that many multi-family properties are condominiums and, thus, with a high number of ownership entities per lot, the likelihood of redevelopment on those lots is low. Recognizing that more than half of the RM-1 parcels have condominiums, there could be a modest increase in housing units allowed by reducing the density requirement from 3,000 square feet to 2,000 square feet of open space per dwelling unit, while still maintaining BVCP compliance.

Regulating the density (dwelling units per acre) of development with minimum open space per dwelling unit requirement is challenging to administer. It also makes it hard to determine the potential density of development since it is based on how a site is designed and configured. One alternative would be to modify the zone to have a lot area per dwelling unit requirement. For instance, a lot area requirement of 3,000 square feet per dwelling unit would be equivalent to medium density (six to 14 dwelling units per acre). **Table 1** below shows this assumption. With many RM-1 lots with the high percentage of condominium ownership and not anticipated to redevelop in the near future, a lot area per dwelling unit requirement could be proposed that would still keep the zone consistent with the BVCP density, while also allowing a modest increase on some lots.

Table 1 – Potential allowable additional units permitted in RM-1 based on different density calculations (staff recommended alternative highlighted)

Zoning District	BVCP maximum density	Lot area per unit for medium density	Potential Additional Housing Units <i>Number of lots (% of lots in zone) that could add a unit</i>			
			2,500 sf of lot area per unit	2,000 sf of lot area per unit	1,500 sf of lot area per unit	1,000 sf of lot area per unit
RM-1	14 du/ac	3,000 sf of lot area per unit	504 (14% increase)	827 (23% increase)	1,061 (30% increase)	1,173 (33% increase)

Staff recommendation: Since a density cap continues to be necessary to be consistent with the BVCP, the proposal to have a FAR limit would be less critical. As there are no restrictions on housing types (as discussed in Suggestion 3 below), the RM-1 density requirements could either be revised to (1) require 2,000 square feet of open space per dwelling (reduced from 3,000 square feet) or (2) require 2,000 square feet of lot area per dwelling unit and stay consistent with the BVCP. The latter would be a 23% increase in potential housing units for the RM-1 zone. It may make sense to retain an open space per dwelling unit requirement to maintain the character created by the open space in RM-1.

City Council Suggestion

3. Opportunities for additional density in lower density areas – Analyze density in low density areas in more depth and explore whether there are areas where additional density, consistent with the BVCP land use designations, may be possible (e.g., allowance for duplexes on corner lots along multi-modal corridors etc.) without any BVCP updates.

As stated earlier, zoning has been implemented through a net or parceled density approach in low and very low-density residential areas rather than a gross density calculation despite the BVCP's notations about using density averaging. More recent in-depth analysis shows that both existing net and gross density calculations have potential for more housing in low density (e.g., RL-1) and very low density residential (e.g., RR) areas. These areas comprise roughly 28% of the city's land area. The results indicate that most lots in these areas could be large enough to allow a duplex. However, allowing duplexes on all lots would arguably be inconsistent with the intent for low density residential and very low-density residential land uses as areas of "*predominantly of single family detached units.*" This is discussed further below.

Below is the description of the Low Density Residential BVCP land use designation pertaining to RL-1 and RL-2 areas:

Low Density Residential (LR)	<p>Characteristics and Locations: LR is the most prevalent land use designation in the city, covering the primarily single-family home neighborhoods, including the historic neighborhoods and Post-WWII neighborhoods.</p> <p>Uses: Consists predominantly of single-family detached units.</p> <p>BVCP Density/Intensity: 2 to 6 dwelling units per acre</p>
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Below is the description of the Very Low Density Residential BVCP land use designation pertaining to RR-1 and RR-2 areas:

Very Low Density Residential (VLR)	<p>Characteristics and Locations: VLR tends to have larger lots and more rural characteristics. Many of these areas are located in unincorporated Boulder County in the Area III–Rural Preservation Area or Area II and may not have urban services. There are several areas in North Boulder and East Boulder within the city limits designated VLR.</p> <p>Uses: Consists predominantly of single-family detached units and related agricultural uses.</p> <p>BVCP Density/Intensity: 2 dwelling units per acre or less</p>
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The descriptions of these zones in Title 9, B.R.C. 1981 are as follows:

“Residential - Rural 1, Residential - Rural 2, Residential - Estate, and Residential - Low 1: Primarily single-family detached dwelling units with some duplexes and attached dwelling units at low to very low residential densities.”

The [Zoning for Affordable Housing Phase One Ordinance 8599](#) permits duplexes and triplexes in the low-density residential zones consistent with the current density limitations of the zones (i.e., 7,000 square feet of lot area per dwelling unit in RL-1 and 30,000 square feet of lot area per dwelling unit in the RR zones). This change enabled the potential for roughly 1,600 additional units over time in the low-density areas of the city. City Council has asked that additional changes be made to these zones to enable more housing.

Alignment with BVCP: Similar to the discussion above on RMX-1, the land use code has considered the RL-1 and RR zones as “established” zones in the past. While not explicitly stated in the land use code today, established zones are those where there was very little change anticipated, whereas redeveloping zones were areas where more growth and changing character were expected. For this reason, staff has been cautious about proposing wholesale changes to the low-density areas of the city without a broader community engagement process associated with a comprehensive planning update. A BVCP update would be the most appropriate approach to engaging the community on changes that may impact the intensity and character of the RL-1 and RR neighborhoods. If the vision for these areas of the city is modified than zoning can be revised consistent with the updated BVCP.

Staff's analysis has found there is capacity for housing growth in the low-density areas consistent with the density maximums specified in the land use designations. However, it is largely a policy decision on behalf of City Council as to what extent of additional growth is appropriate and consistent with the current BVCP. While additional density could be added consistent with the maximum densities defined by the BVCP, the council must also consider the BVCP's description regarding the character of these zones as areas being "*predominantly single-family detached units*" before providing direction to staff.

Tables 2 and 3 below depict a detailed analysis of the RL-1, RR-1, and RR-2 zones and the potential for additional housing units in several different scenarios. To be consistent with the BVCP's intent for the zones to be "*predominantly single-family detached units*," staff also assumed only duplex units in these scenarios. **Attachment C** contains a more detailed analysis of the content of **Tables 2 and 3** below. To see how many lots would be eligible under each of the scenarios below, see **Attachment D**, which includes Maps 1 through 8 relating to the RL-1, RR-1, and RR-2 zones.

Table 2– Potential allowable additional units permitted in RL-1 based on different density calculations (staff recommended alternative highlighted)

Zoning District	BVCP maximum density	Current maximum density per zoning (lot area per unit required)	Potential Additional Housing Units <i>Number of lots (% of lots in zone) that could add a unit</i>			
			5,000 sf of lot area per unit	4,000 sf of lot area per unit	3,500 sf of lot area per unit	3,000 sf of lot area per unit
RL-1	6 du/ac	7,000 sf of lot area per unit	2,128 (19% increase)	4,325 (39% increase)	8,008 (73% increase)	9,310 (85% increase)
Maps showing eligible lots			See Map 1	See Map 2	See Map 3	See Map 4

Table 3 – Potential allowable additional units permitted in RR-1 and RR-2, consistent with the BVCP, based on different density calculations (staff recommended alternative highlighted)

			Potential Additional Housing Units <i>Number of lots (% of lots in zone) that could add a unit</i>			
Zoning District	BVCP maximum density	Current maximum density per zoning (lot area per unit required)	25,000 sf of lot area per unit	20,000 sf of lot area per unit	15,000 sf of lot area per unit	10,000 sf of lot area per unit
RR-1	2 du/ac	30,000 sf of lot area per unit	7 (5% increase)	37 (28% increase)	110 (82% increase)	124 (93% increase)
RR-2			9 (3% increase)	33 (13% increase)	80 (31% increase)	229 (88% increase)
Maps showing eligible lots			See Map 5	See Map 6	See Map 7	See Map 8

Staff recommendation: The analysis above shows varying degrees of potential density increases in the RL-1, RR-1, and RR-2 zoning districts. All would be considered

consistent with the BVCP land use designation maximum densities of six dwelling units in RL-1 and two dwelling units per acre in RR-1 and RR-2. However, not all would be consistent with the intent of areas being “*predominantly single-family detached units*.” Based on this and consistent with the highlighted recommended alternatives above, staff recommends options where only a percentage of the zone (less than 50% can add a duplex) as reflected below:

- **RL-1** – Reduce the lot area per dwelling unit from 7,000 to 4,000 square feet per dwelling unit. This would enable a potential density increase of 39% consistent with the BVCP’s intent to keep areas “*predominantly single-family*.” Map 2 shows the extent of lots that would be large enough to accommodate an additional unit under this option. This option would limit duplexes to lots that are larger than 7,000 square feet and would avoid increasing density on smaller non-standard lots and in areas that are already impacted by increased density on lots smaller than 7,000 square feet in the older parts of the city.
- **RR-1** – Reduce the lot area per dwelling unit from 30,000 to 20,000 square feet per dwelling unit. This would enable a potential density increase of 28% consistent with the BVCP. Map 6 shows the extent of lots that would be large enough to accommodate an additional unit under this option.
- **RR-2** – Reduce the lot area per dwelling unit requirement of 30,000 to 15,000 square feet per dwelling unit. This would enable a potential density increase of 31% consistent with the BVCP. Map 7 shows the extent of lots that would be large enough to accommodate an additional unit under this option.

Lastly, staff recommends this path since it is not expected that all lots that can have a duplex will immediately be reconfigured to have a duplex. Therefore, areas would continue to be “*predominantly single-family detached units*” for the foreseeable future. Changes beyond this scope would require BVCP updates changing the vision of these low-density residential areas before any zoning changes could be made.

RL-2 and RE zones: It should be noted that RL-2 is excluded from this analysis because the zone already allows a variety of housing types and because any density changes could result in significant changes to the many Planned Unit Developments (PUDs) in the RL-2 zone. Separate from this code change project, P&DS intends to study RL-2 and PUDs in the near future. RE (Residential Estate) is also excluded since [Ordinance 8599](#) already enabled a density increase to permit duplexes in that zone since the change was consistent with the BVCP.

Duplexes on corner lots: Staff does not recommend allowing duplexes on corner lots in these zones since it is often difficult to determine what constitutes a corner lot based on the variety of angles of street intersections and direction of streets throughout the city. For instance, it raises questions about whether all of the lots shown with stars in Figure 3 for reference should be considered a corner lot. In addition, corner lots are not always larger than interior lots. For these reasons, this option could be difficult to interpret and

implement. Staff, therefore, recommends more straightforward options for determining eligible sites based on lot area.

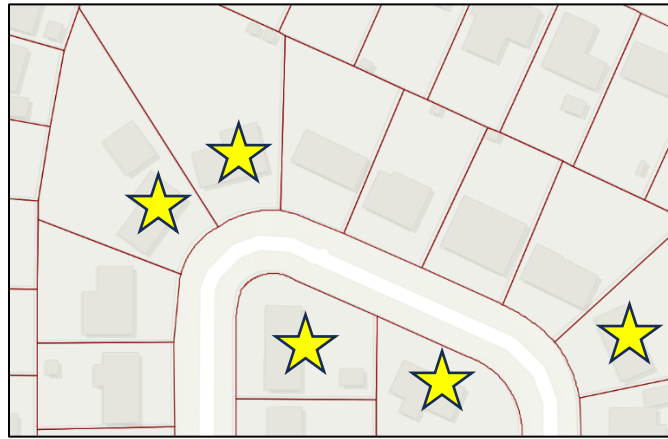


Figure 3- Which of these starred lots should be considered corner lots?

Allow duplexes along transit corridors: If council wanted to enable duplexes broadly like the scenarios above, the allowance for duplexes could potentially be limited to RL-1, RR-1 and RR-2 properties that are within a ¼ mile to ½ mile of transit corridors. There would be clear planning rationale for allowing increased density along corridors, but depending on the chosen density calculation, it may make sense to enable additional units only on larger lots that are outside certain older areas of the city to avoid increased impacts, similar to the RMX-1 discussion above. Staff would recommend a calculation of 4,000 or 5,000 square feet lot area required per unit, as it would not apply to nonstandard and nonconforming lots in older parts of the city that already have a comparatively higher density. The city would need to clearly define what would qualify as a “transit corridor”.

City Council Suggestion

4. Explore additional restrictions in low density residential zones – Explore additional regulations to enable homeownership in low density residential zones and preservation of the character of such areas, such as owner-occupancy on lots where additional dwelling units may be allowed.

There has been a steady drop in owner occupancy in the city in recent years, which has caused concern for many residents about neighborhood stability and upkeep. Owner occupancy requirements are used in some communities to address concerns about how neighborhood character could change as the amount of renters increase. Residents have also expressed concerns about investment companies buying single-family homes to rent for profit. Despite this, the city has no owner occupancy requirements for single-family detached homes except those required for lots with accessory dwelling units. Because of these concerns, one former council member requested that staff explore whether it makes

sense to require owner occupancy for any low-density residential lot that has more than one dwelling unit.

Requiring owner occupancy of accessory dwelling units (ADUs and sometimes called Secondary Residences) is common among communities, although several state governments have recently passed legislation prohibiting this requirement and some localities have removed this requirement since it is found to be a barrier to housing. While relatively common with ADUs as a way to help define a unit that is accessory to a principal unit, it is less common to require owner occupancy as a condition of approval to add an additional housing unit like a duplex, which would be considered a principal unit or use on a lot.

Staff has not come across many communities that require owner occupancy for principal units. Glenwood Springs in Colorado has been raised as an example, but the town is only exploring a requirement that local work force be allowed in additional units as duplexes and not as an owner occupancy requirement. Glenwood Springs, like many communities, has opted to not explore owner occupancy from a social equity perspective.

St. Paul, Minnesota is an example of a community that requires owner occupancy for additional units, but the city treats the additional units as a density bonus. The bonus includes several options beyond the owner occupancy requirement and is implemented in zones considered high density residential as opposed to low density residential so it is not entirely analogous to Boulder. Refer to Saint Paul's website [*"Density Bonus in the H1-H2 Residential Districts"*](#) for more information.

The closest example to what is requested as part of this project is [California Senate Bill 9](#) which enables traditional single-family lot owners to subdivide their lot and/or create a duplex. The bill contains an owner occupancy requirement, which requires a homeowner to live in one of the units for three years from the time a subdivision is approved. Santa Cruz, California offers an example of how this is implemented on an [eligibility checklist](#) found on Santa Cruz's website.

As stated in prior discussions on occupancy, many communities have been moving away from regulating occupancy and owner occupancy in favor of addressing impacts such as property maintenance, noise, and refuse directly through enforcement rather than indirect regulation. A [Planetizen article](#) discusses how owner occupancy requirements further constrain housing supply and that such regulations are seen as “*a back door way of regulating property upkeep and mitigation of noise*” since “*owner-occupiers are sometimes seen as more responsible towards property maintenance and community concerns.*” Another article indicates that the contained housing supply contributes to driving up housing costs: [Are owner-occupancy requirements driving up housing cost?](#)

[An article from the Brookings Institute](#) argues against requiring owner occupancy noting:

“these owner-occupancy rules have several negative effects on equity, efforts to build multifamily housing, and the overall housing supply. Because renters typically have lower incomes than homeowners and are racially more diverse,

owner-occupancy requirements affect the economic and demographic makeup of neighborhoods. Owner-occupancy requirements also prevent property owners from developing repeat expertise in acquiring and renovating existing housing stock to add ADUs; as a result, lenders are less likely to finance ADUs. Finally, owner-occupancy rules constrain supply because each existing house can only give rise to one rental unit, not two, and homes owned by non-residents cannot add an ADU. (Relatedly, many codes are explicit that if an investor purchases an owner-occupied home, it must leave the ADU vacant. Local governments could avoid these impacts by simply regulating upkeep. Rather than assume that renters will be bad neighbors, local officials could enforce housing codes, blight ordinances, and noise ordinances. Instead, they rely on owner-occupancy as a shortcut for regulating maintenance.”

Staff recommendation: Previous guidance from City Council has been to remove zoning barriers to increase the potential for additional housing units. Adding a requirement for owner occupancy would add an additional zoning barrier. Further, it would add an administrative burden for the city to monitor and enforce owner-occupancy. It would be possible to administer the requirement similar to ADUs, but nonetheless, it would add a new task to permit reviews. This would complicate and delay permit reviews. It may also present a future area of regulatory conflict if the state passes a prohibition on owner-occupancy requirements for ADUs that would not apply to duplexes (or triplexes). Owners may also just opt to subdivide their lots to create one new single-family house that is not subject to the requirement instead of converting their homes to a duplex. For these reasons, staff does not recommend moving forward with this requirement.

City Council Suggestion

5. Exemption for “missing middle” housing – Consider an exemption to the Site Review process for projects that provide 100% “missing middle” housing if there are no land use modifications associated with the project. Solicit feedback on this type of housing and proposed changes from groups assisting/housing with those with disabilities.

During the Phase One project discussions in 2023 with City Council, staff recommended that projects that were middle housing (i.e., duplexes, triplexes, fourplexes, or townhouses) be exempt from the Site Review process if all zoning requirements were met (e.g., no requested modifications). This was proposed to encourage more middle housing in the city since, today, only roughly 9% of housing units in Boulder are considered “middle” housing.

City Council chose not to include this option in [Ordinance 8599 \(Zoning for Affordable Housing Phase One\)](#), but rather asked that staff take a second look into the issue before recommending again. One council member raised concerns that perhaps middle housing may not be a preferred housing option in the future since it may not be conducive for older residents or people with disabilities if accessibility requirements did not apply to housing units like duplexes, triplexes, etc. The council member recommended that staff

investigate building code requirements and reach out to the Center for People with Disabilities to determine whether middle housing made sense for disabled persons.

The International Residential Code only establishes accessibility requirements for any buildings that are over five dwelling units or if any residential building has more than one unit has units on top of each other. What this means is that many middle housing type units would not have accessibility requirements such as elevators or ramps for access.

Staff reached out to the Center for People with Disabilities about the possibility for a Site Review exemption for middle housing to see if this housing typology would be desirable for disabled persons. Because many middle housing units would not have accessibility requirements, the center expressed concern stating their preference was for housing types that include [universal design](#). Universal design, which aims to have environments and products that are accessible to all, is further described in an article named [“Beyond Accessibility To Universal Design”](#).

Staff recommendation: Staff has already made code changes in the prior [Zoning for Affordable Housing Phase One Ordinance 8599](#) to incentivize middle housing through enabling greater flexibility in the code related to townhouses and broader allowances for duplexes and triplexes. This phase of the project proposes an option to increase the number of duplexes in low density residential areas, as described above. Considering these options and factoring in the accessibility concerns from the Center for People with Disabilities, staff does not find an exemption for middle housing necessary and recommends that the option not be further pursued. Lastly, the city could consider future amendments to the building code in the future that could add accessibility requirements for middle housing type units but that would have to be explored further.

City Council Suggestion

6. Further analyze minimum thresholds for Site Review and whether any thresholds should be tied to number of dwelling units – Consider changing additional zones in [Table 2-2 in Section 9-2-14, “Site Review,” B.R.C. 1981](#) to “0” to make them eligible for Site Review.

[Ordinance 8599 \(Zoning for Affordable Housing Phase One\)](#) included modifications to the Site Review requirements to remove thresholds based on number of dwelling units, and instead use floor area or lot area size. The rationale was that basing the process on number of dwelling units could discourage the provision of additional housing units. City Council requested that additional zones be looked at for whether any triggers based on the number of dwelling units could be modified.

While Site Review could discourage some applicants from applying, in many instances applicants pursue the Site Review process because it allows for more code flexibility with respect to setbacks and height. It is also advantageous to the city for getting more innovative, high-quality designs and more permanently affordable housing. In that theme of thought, council also requested that some Site Review threshold based on lot size be

lowered so that more projects could opt to undergo Site Review (not required). For instance, some zones do not allow an applicant to apply for Site Review unless the size of the site is of a certain size (e.g., one acre). Some zones allow Site Review irrespective of the size of the site and are denoted in the Site Review threshold table as “0”. Higher thresholds are typically intended for properties where Site Review would be less desired (e.g., low density residential zones, business commercial service (BCS)), either by a lower anticipated level of change or situations where variances (requiring demonstration of hardships) are more appropriate.

Staff recommendation: Based on the council direction and further analysis, staff has the following suggestions for modifications:

- ***Reduce the Site Review threshold in the Business Community zones (BC-1 and BC-2) and Business Transitional (BT) zones, which is currently one acre down to no minimum required.*** BC zones are predominantly neighborhood centers and may see more interest in coming years for residential uses (ground floor uses would be required to be commercial unless approved through Use Review per the current code). Additional residential could benefit from additional flexibility and the option for increased permanently affordable housing through the city’s community benefit requirements in the Site Review process. Site Review also ensures a higher quality design outcome.
- ***Reduce the Site Review threshold in the Industrial General (IG) and Industrial Manufacturing (IM) zones from two acres to one acre.*** Similar to the option above, there will likely be more interest in the IG and IM zone in the future for residential and mixed use. To ensure higher quality, compatible projects, and greater potential for increased permanently affordable housing, staff finds that this change would be appropriate.
- ***Remove the number of dwelling units from the threshold in the following zones and enable any site to be eligible for Site Review: MH (Mobile Home) and MU-3 (Mixed Use – 3).***
- ***Remove all thresholds that note “5 or more units are permitted on the property” and replace with “7,500 square feet of floor area” in the following zones: RH-3, RH-4, RH-5, RH-6, RH-7, RM-1, RM-2 and RM-3.*** This change follows the logic of changes in Ordinance 8599 that assumes 1,500 square feet of floor area per unit.
- ***Change the RMX-1 threshold from “5 or more units are permitted on the property” to “1 acre”.***
- ***Change the RR-1 and RR-1 thresholds from “5 or more units are permitted on the property” to “3 acres”.***

- ***Change the RL-1 and RL-2 thresholds from “5 or more units are permitted on the property to “3 acres” and include a Site Review requirement for any subdivisions of 20 or more lots.***

City Council Suggestion

7. Rethink whether research and development (R&D) uses should allow additional residential FAR in the industrial zones – Consider removal of R&D uses from the allowance for additional residential FAR and list other light industrial uses that should be promoted for light industrial areas.

[Ordinance 8599 \(Zoning for Affordable Housing Phase One\)](#) was adopted by council with a provision that enables industrial projects to have a higher FAR if residential is paired with research and development and/or light manufacturing uses. This was intended to encourage residential infill in industrial zones without driving out light industrial uses. While this provision was included in the ordinance, council questioned whether research and development (R&D) should be promoted over other light industrial uses to preserve and requested further analysis of this.

Staff has discussed this topic with a planning consultant and attorney who represent many R&D applicants. Staff has learned that some R&D applicants may be open to having residential on sites and others less so. There may be some legal considerations and barriers in some instances to some companies agreeing to have residential on sites. Based on these discussions, staff continues to find that there is no harm to including an incentive for more residential floor area on sites that include R&D uses, since it encourages mixed-use in the industrial zones (more residential and inclusion of industrial uses). Further, there is no penalty to industrial uses that do not include a residential component. Staff, however, finds that there may be some light manufacturing uses that should not be integrated with residential and therefore, recommends including only the following light industrial uses below (with definitions):

- *Business support services* means establishments that provide support services primarily to other businesses such as: duplicating, mailing, parcel shipping, security, property management, business equipment repair, and office supplies.
- *Building material sales* means a business primarily engaged in the retail sale from the premises of supplies used in construction including, without limitation, doors, hardware, windows, cabinets, paint, wall coverings, floor coverings, garden supplies, and large appliances and where the storage of materials is primarily within the principal building, but does not include a lumber yard.
- *Warehouse or distribution facility* means an establishment primarily engaged in the storage and distribution of goods and materials in large quantity to retailers or other businesses for resale to individual or business customers.

- *Wholesale business* means a business primarily engaged in the selling of merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for or selling merchandise to such individuals or companies.
- *Light manufacturing* means facilities for the manufacturing, fabrication, processing, or assembly of products, provided that such facilities are completely enclosed and provided that any noise, smoke, vapor, dust, odor, glare, vibration, fumes, or other environmental contamination produced by such facility is confined to the lot upon which such facilities are located and is regulated in accordance with applicable city, state, or federal regulations. Light manufacturing may include a showroom or ancillary sales of products related to the items manufactured on-site.
- *Building and landscaping contractor* means the various trades that make up the construction and landscape industry such as plumbing, carpentry, electrical, mechanical, painting, roofing, concrete, landscaping, and irrigation.
- *Equipment repair and rental* means a business that rents and/or repairs items such as tools, construction, lawn, garden, building maintenance, party equipment, and the rental of moving trucks and trailers, but does not include an automobile repair or rental facility, and may include outdoor storage of equipment.
- *Research and development* means a facility that engages in product or process design, development, prototyping, or testing for an industry. Such industries may include but are not limited to biotechnology, life sciences, pharmaceuticals, medical or dental instruments or supplies, food, clothing, outdoor equipment, computer hardware or software, or electronics. Facilities may also include laboratory, office, warehousing, and light manufacturing functions as part of the research and development use.
- *Non-vehicular repair and rental services* means a business that primarily provides services rather than goods and does not include outdoor storage, such as: appliance repair, electronics repair, furniture repair, small power equipment repair, and tool and equipment rental.
- *Service of vehicles* means the repair, servicing, maintenance, or installation of accessories for vehicles including motorcycles, motorbikes, automobiles, trucks, snowmobiles, trailers, campers, recreational vehicles, sailboats, and powerboats where outdoor storage of a vehicle does not exceed five consecutive days.

Staff recommendation: Staff recommends keeping the research and development use in the list of uses that would enable a residential floor area bonus in the industrial zones as way to incentivize residential in industrial zones and maintain/preserve industrial uses. Staff recommends narrowing the list of light manufacturing uses to only those listed above.

PUBLIC AND STAKEHOLDER ENGAGEMENT

Community Engagement

Significant community input was received as part of the first phase of the Zoning for Affordable Housing project. As much of this feedback continues to be relevant, council

members can access prior engagement summaries received during the course of the project in the [staff memo for the Mar. 23, 2023 study session memo](#).

Attachment A contains a draft Project Charter for the second phase of the project. Staff will begin more robust community engagement once the preferred options are defined by City Council.

Board Feedback to Date

Housing Advisory Board

Once City Council provides input on a specific option or options to analyze further, staff intends to present the information to the Housing Advisory Board and obtain feedback.

Planning Board

Once City Council provides input on a specific option or options to analyze further, staff intends to present the information to the Planning Board and obtain feedback. Planning Board will make a recommendation on any ordinance prior to City Council review and decision on an ordinance.

SUMMARY OF STAFF RECOMMENDATIONS

Suggestion No. 1 - Add RMX-1 (Mixed Density Residential – 1) to the scope of the project – Explore changes to the RMX-1 zone that would apply the current floor area ratio (FAR) maximums per lot, but removes the lot area per dwelling unit requirement.

Staff recommendation: Revise the RMX-1 zone to apply the FAR to multi-family units in addition to single-family units and adjust the intensity standard to be 3,000 square feet per dwelling unit instead of the current 6,000 square feet per dwelling unit requirement.

Suggestion No. 2 - Add RM-1 (Medium Density Residential – 1) to the scope of the project – Explore changes to the RM-1 zone that would remove the minimum open space per dwelling unit requirement and replace with the FAR limit of the RMX-1 zone.

Staff recommendation: Revise RM-1 to permit a density increase by either reducing the 3,000 square feet of open space per dwelling unit to 2,000 square feet of open space per dwelling unit or modify the density calculation to be lot area per dwelling unit and set at 2,000 square feet of lot area per dwelling unit consistent with the 14 dwelling units per acre maximum in the BVCP.

Suggestion No. 3 - Opportunities for additional density in lower density areas – Analyze density in low density areas in more depth and explore whether there are areas where additional density, consistent with the Boulder Valley Comprehensive Plan (BVCP) land use designations, may be possible (e.g., allowance for duplexes on corner lots along multi-modal corridors etc.) before any BVCP updates.

Staff recommendation: Staff recommends the following changes in the RL-1, RR-1 and RR-2 zones:

- **RL-1** – Modify the lot area per dwelling unit figure of 7,000 square feet per dwelling unit down to 4,000 square feet per dwelling unit.
- **RR-1** – Modify the lot area per dwelling unit figure of 30,000 square feet per dwelling unit down to 20,000 square feet per dwelling unit.
- **RR-2** – Modify the lot area per dwelling unit figure of 30,000 square feet per dwelling unit down to 15,000 square feet per dwelling unit.

Suggestion No. 4 - Explore additional restrictions in low density residential zones – Explore whether additional regulations to enable homeownership in low density residential zones and preserving the character of such areas, such as owner-occupancy on lots where additional dwelling units may be allowed.

Staff recommendation: Staff does not recommend moving forward with this requirement.

Suggestion No. 5 - Exemption for middle housing – Consider an exemption to the Site Review process for projects that provide 100% middle housing if there are no land use modifications associated with the project. Solicit feedback from groups assisting with those with disabilities on these changes.

Staff recommendation: Do not pursue this option. There are other options already integrated into the code to incentivize middle housing.

Suggestion No. 6 - Further analyze minimum thresholds for Site Review and whether any thresholds should be tied to number of dwelling units – Consider changing additional zones in [Table 2-2 in Section 9-2-14, “Site Review,” B.R.C. 1981](#) to “0” to make them eligible for Site Review.

Staff recommendation: Staff recommends changes to the Site Review threshold table that remove all references to dwelling units as a trigger and the lowering of land area thresholds in BC, BT, IG and IM zones.

Suggestion No. 7 - Rethink whether research and development (R&D) uses should allow additional residential FAR in the industrial zones – Consider removal of R&D uses from the allowance for additional residential FAR and list other light industrial uses that should be promoted for light industrial areas.

Staff recommendation: Staff recommends keeping the research and development use in the list of uses that would enable a residential floor area bonus in the industrial zones as way to incentivize residential in industrial zones and maintain/preserve industrial uses. Staff recommends narrowing the list of light manufacturing uses to only those listed on pages 18-19.

NEXT STEPS

Following direction from City Council at the study session, staff plans to move forward with community outreach. Staff also plans to attend meetings of Planning Board and Housing Advisory Board in the coming weeks to inform the boards of the project’s second phase and obtain feedback on any preferred options or narrowed set of options. If necessary, staff may return to City Council in the June timeframe for any additional direction. Tentatively, a draft ordinance is scheduled to be brought forward to Housing Advisory Board and Planning Board in August or September and City Council in October. The goal is to complete this project in Quarter Three of 2024.

ATTACHMENTS

Attachment A-	Draft Project Charter
Attachment B-	Land Use Maps analysis showing existing gross and net (parceled) densities in residential zones
Attachment C-	Detailed zoning analysis of RM-1, RL-1, RR-1, and RR-2 zones
Attachment D-	Maps 1 through 8 depicting the number of eligible lots in RL-1, RR-1, and RR-2 zones based on the variety of modified density calculations



Zoning for Affordable Housing 2.0

Land Use Code Amendment
Project Charter – *Working Draft*

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Project Purpose & Goals for Phase 1.0 and 2.0

Background

Boulder's housing market is unaffordable to many, driving some residents to struggle to find housing in the city and driving some to leave. Those who work in Boulder often cannot afford to live in the city so in-commuting is a necessity. Further, older adults on fixed incomes struggle to pay property taxes that continue to rise significantly and stay in their home and the community.



In response, Boulder has taken on a multifaceted approach to encourage more affordable housing within the city limits through the city's inclusionary housing program and zoning regulations. While zoning has been developed to require a minimum percentage of on-site affordable units and funding through in lieu fees, there is community interest in exploring additional methods to secure more deed restricted permanently affordable housing and generally smaller, less expensive housing. Some zoning regulations, particularly the intensity standards that specify maximum density that were developed decades ago and predate the problem, and often discourage or prevent affordable housing opportunities.

Some maximum density requirements use a standard of calculation such as lot area per dwelling unit or open space per dwelling unit limits that encourage provision of larger, more expensive units since a density yield is lower than a floor area allowance and thus when the floor area is broken up by the allowable number of units, the outcome is typically larger floor area units that are not conducive with changing demographics in the community where demand is for more, modest sized units meeting middle income needs.

Problem Statement

Boulder housing is increasingly more costly to rent or own making it ever more challenging for some to afford to live or stay in Boulder. Occupancy limitations and other zoning regulations may make such challenges more pronounced. Current zoning restriction may not enable inclusiveness of different cultural living arrangements.

Project Purpose Statement

Continue to evaluate the land use code for other modifications that could remove zoning barriers to more affordable units and smaller, modest-sized units.

Goals and Objectives

- Review city standards and regulations and identify areas where zoning may discourage affordable or modest sized dwelling units, including without limitation, the intensity standards and parking requirements.
- Vet the options with the community to inform any proposed ordinance changes.
- Prepare land use code amendments that provide greater opportunities to obtain more housing affordable options.

BVCP Guidance and Policies

The following "Core Values" expressed in the BVCP relate to occupancy and housing choice:

"A welcoming, inclusive and diverse community"

"A diversity of housing types and price ranges"

Further, the following "Focus Areas" also relate to occupancy and housing choice:

Housing Affordability & Diversity

Boulder's increasing housing affordability challenge, particularly for middle income households as well as for low and moderate incomes, made housing a major focus of this update (i.e., 2015). Additionally, the plan's guidance about housing and neighborhoods defines the kind of community Boulder is and will become. The plan includes several land use related policies to support additional housing and new types of housing (e.g., townhomes, live-work) in certain locations such as the Boulder Valley Regional Center



and light industrial areas. The Housing section also contains new policies addressing affordability. A new enhanced community benefit policy is also located in Section 1.

Growth—Balance of Future Jobs & Housing

For several decades, the plan has recognized Boulder's role as a regional job center and includes policies regarding jobs and housing balance. Boulder's potential for non-residential growth continues to outweigh housing and could lead to higher rates of in-commuting. Therefore, land use related policy changes in this plan aim to reduce future imbalances by recommending additional housing in commercial and industrial areas (and corresponding regulatory changes) and reductions of non-residential land use potential in the Boulder Valley Regional Center. The plan further emphasizes the importance of working toward regional solutions for transportation and housing through its policies for a Renewed Vision for Transit, regional travel coordination and transit facilities, and regional housing cooperation.

The "Housing" section of the BVCP outlines the challenges related to housing in Boulder:

The high cost of local housing results in many households paying a disproportionate amount of their income for housing or finding it necessary to move farther from their work to find affordable housing (often out of Boulder County). Households that find housing costs burdensome, or by the combined costs of housing and transportation have less money available for other necessities, may find it difficult to actively participate in the community. This leads to a more transient and less stable workforce, a less culturally and socioeconomically diverse community, additional demands on supportive human services, and to an exclusion of key community members from civic affairs.

Housing trends facing the community include:

- Continued escalation of housing costs that disproportionately impact low and moderate income households;
- The "shed rate," the rate at which homes are lost from the affordable range, outpacing the current replacement rate;
- An aging population;
- Loss of middle-income households in the community;
- Diminishing diversity of housing types and price ranges;
- The University of Colorado's anticipated continued student growth;
- The growing difficulty of providing affordable housing attractive to families with children in a land-constrained community; and
- The need to evaluate regulations that creatively accommodate an expanding variety of household types, including multi-generational households.

Therefore, the policies in this section support the following city and county goals related to housing:

- Support Community Housing Needs;
- Preserve & Enhance Housing Choices; and
- Integrate Growth & Community Housing Goals

The following BVCP policies have been identified for their relevancy to affordability and housing choice:

1.11 Jobs: Housing Balance

Boulder is a major employment center, with more jobs than housing for people who work here. This has resulted in both positive and negative impacts, including economic prosperity, significant in-commuting and high demand on existing housing. The city will continue to be a major employment center and will seek opportunities to improve the balance of jobs and housing while maintaining a healthy economy.



This will be accomplished by encouraging new housing and mixed-use neighborhoods in areas close to where people work, encouraging transit-oriented development in appropriate locations, preserving service commercial uses, converting commercial and industrial uses to residential uses in appropriate locations, improving regional transportation alternatives and mitigating the impacts of traffic congestion.

2.10 Preservation & Support for Residential Neighborhoods

The city will work with neighborhoods to protect and enhance neighborhood character and livability and preserve the relative affordability of existing housing stock. The city will also work with neighborhoods to identify areas for additional housing, libraries, recreation centers, parks, open space or small retail uses that could be integrated into and supportive of neighborhoods. The city will seek appropriate building scale and compatible character in new development or redevelopment, appropriately sized and sensitively designed streets and desired public facilities and mixed commercial uses. The city will also encourage neighborhood schools and safe routes to school.

7.01 Local Solutions to Affordable Housing

The city and county will employ local regulations, policies and programs to meet the housing needs of low, moderate and middle-income households. Appropriate federal, state and local programs and resources will be used locally and in collaboration with other jurisdictions. The city and county recognize that affordable housing provides a significant community benefit and will continually monitor and evaluate policies, processes, programs and regulations to further the region's affordable housing goals. The city and county will work to integrate effective community engagement with funding and development requirements and other processes to achieve effective local solutions.

7.06 Mixture of Housing Types

The city and county, through their land use regulations and housing policies, will encourage the private sector to provide and maintain a mixture of housing types with varied prices, sizes and densities to meet the housing needs of the low-, moderate- and middle-income households of the Boulder Valley population. The city will encourage property owners to provide a mix of housing types, as appropriate. This may include support for ADUs/OAUs, alley houses, cottage courts and building multiple small units rather than one large house on a lot.

7.08 Preserve Existing Housing Stock

The city and county, recognizing the value of their existing housing stock, will encourage its preservation and rehabilitation through land use policies and regulations. Special efforts will be made to preserve and rehabilitate existing housing serving low-, moderate- and middle-income households. Special efforts will also be made to preserve and rehabilitate existing housing serving low-, moderate- and middle-income households and to promote a net gain in affordable and middle-income housing.

7.10 Housing for a Full Range of Households

The city and county will encourage preservation and development of housing attractive to current and future households, persons at all stages of life and abilities, and to a variety of household incomes and configurations. This includes singles, couples, families with children and other dependents, extended families, non-traditional households and seniors.

7.11 Balancing Housing Supply with Employment Base

The Boulder Valley housing supply should reflect, to the extent possible, employer workforce housing needs, locations and salary ranges. Key considerations include housing type, mix and affordability. The



city will explore policies and programs to increase housing for Boulder workers and their families by fostering mixed-use and multi-family development in proximity to transit, employment or services and by considering the conversion of commercial- and industrial-zoned or -designated land to allow future residential use.

7.12 Permanently Affordable Housing for Additional Intensity

The city will develop regulations and policies to ensure that when additional intensity is provided through changes to zoning, a larger proportion of the additional development potential for the residential use will be permanently affordable housing for low-, moderate- and middle-income households.

10.02 Community Engagement

The city and county recognize that environmental, economic and social sustainability of the Boulder Valley are built upon full involvement of the community. The city and county support better decision-making and outcomes that are achieved by facilitating open and respectful dialogue and will actively and continually pursue innovative public participation and neighborhood involvement. Efforts will be made to: 1. Use effective technologies and techniques for public outreach and input; 2. Remove barriers to participation; 3. Involve community members potentially affected by or interested in a decision as well as those not usually engaged in civic life; and 4. Represent the views or interests of those less able to actively participate in the public engagement process, especially vulnerable and traditionally under-represented populations. Therefore, the city and county support the right of all community members to contribute to governmental decisions through continual efforts to maintain and improve public communication and the open, transparent conduct of business. Emphasis will be placed on notification and engagement of the public in decisions involving large development proposals or major land use decisions that may have significant impacts and/ or benefits to the community.

Phase 1.0

On Oct. 5, City Council adopted an ordinance that changed the Land Use Code to removes barriers in order to allow more housing units in some areas, enable smaller homes and encourage a greater diversity of housing types. This includes allowing more housing units in growth areas like the Boulder Valley Regional Center, neighborhood centers and industrial areas as well as allowing duplexes and triplexes in low density residential areas if they are consistent with current density limits. The adopted Phase 1.0 changes went into effect on **Jan. 1, 2024**.

Phase 2.0

Other changes, which were found to necessitate additional public outreach and analysis, were requested by City Council to be accomplished as part of a second phase of the project. The following changes are under consideration for Phase 2.0:

- **Exemption for middle housing** – Consider an exemption to the Site Review process for projects that provide 100% middle housing if there are no land use modifications associated with the project. Solicit feedback from groups assisting people with disabilities on these changes.
- **Add RMX-1 (Mixed Density Residential – 1) to the scope of the project** – Explore changes to the RMX-1 zone that would apply the current floor area ratio (FAR) maximums per lot, but removes the lot area per dwelling unit requirement.



- **Add RM-1 (Medium Density Residential – 1) to the scope of the project** – Explore changes to the RM-1 zone that would remove the minimum open space per dwelling unit requirement and replace with the FAR limit of the RMX-1 zone.
- **Rethink whether research and development (R&D) uses should allow additional residential FAR in the industrial zones** – Consider removal of R&D uses from the allowance for additional residential FAR and list other light industrial uses that should be promoted for light industrial areas.
- **Further analyze minimum thresholds for Site Review and whether any thresholds should be tied to number of dwelling units** – Consider changing additional zones in [Table 2-2 in Section 9-2-14, “Site Review,” B.R.C. 1981](#) to “0” to make them eligible for Site Review.
- **Opportunities for additional density in lower density areas** – Analyze density in low density areas in more depth and explore whether there are areas where additional density, consistent with the Boulder Valley Comprehensive Plan (BVCP) land use designations, may be possible (e.g., allowance for duplexes on corner lots along multi-modal corridors etc.) before any BVCP updates.
- **Explore additional restrictions in low density residential zones** – Explore whether additional regulations to enable homeownership in low density residential zones and preserving the character of such areas, such as owner-occupancy on lots where additional dwelling units may be allowed.

Anticipated Outcomes for Phase 2.0

Adoption of an ordinance to amend the following Title 9, Land Use Code, sections:

- Chapter 9-2, “Review Process,” B.R.C. 1981, if middle housing is excepted and/or Site Review thresholds are changed
- Chapter 9-6, “Use Standards,” B.R.C. 1981, if the R&D uses are removed from the Residential in Industrial Standards
- Chapter 9-7, “Form and Bulk Standards,” B.R.C. 1981, if further changes to setbacks or bulk requirements are enacted to make it more feasible for middle housing uses
- Chapter 9-8, “Intensity Standards,” B.R.C. 1981, if density changes are done in the RMX-1 and RM-1 zoning districts
- Chapter 9-9, “Development Standards,” B.R.C. 1981, if more than one principal building are permitted per lot

Engagement & Communication for Phase 2.0

Level of Engagement

The City of Boulder has committed to considering four possible levels when designing future public engagement opportunities (see below chart). For this project, the public will be **Consulted** on any proposed changes to the intensity and development standards. See Appendix for the guiding Boulder Engagement Framework.

Targeted engagement will be focused towards property owners and renters in the RMX-1 and RM-1 zone as well as specific low density residential areas where there is potential for additional housing and historically excluded communities. There will also be opportunities for the broader community to provide input.



Who will be impacted by decision/anticipated interest area

- **Residents and neighborhoods** who may be impacted from potential use changes in traditionally single-family neighborhoods.
- **Commercial and residential property owners or firms**, who own or manage properties that are anticipated for more housing
- **Under-represented groups** that may have an interest in use changes but may be unfamiliar with the methods to offer input.
- **City staff, City boards, and City Council** who will administer any amended Use Standards of the Land Use Code, and who will render development approval decisions.

Overall engagement objectives

- Model the engagement framework by using the city's decision-making wheel, levels of engagement and inclusive participation.
- Involve people who are affected by or interested in the outcomes of this project, including historically excluded communities.
- Provide engagement options.
- Remain open to new and innovative approaches to engaging the community.
- Provide necessary background information in advance to facilitate meaningful participation.
- Be efficient with the public's time.
- Be clear about how the public's input influences recommendations for transparency and building trust and to support decision-makers.
- Show why ideas were or were not included in the staff recommendation.

Engagement strategies

Since the COVID-19 pandemic, engagement has been done routinely in a hybrid manner with some in person engagement and some virtual. The following engagement tools and techniques will be implemented throughout the project.

FOCUS GROUP MEETINGS

Purpose: Staff will plan to host one or more focus group meetings (in person) to present code changes that may affect specific neighborhoods and stakeholders. The focus of the meetings will be to hear feedback from specific neighborhoods about the City Council requested changes.

Logistics: Staff will work with key neighborhood groups and interested stakeholders. Engagement staff are may need to assist in the event.

Neighborhood groups to **consult** throughout this process are:

Single-family detached neighborhoods: Broader outreach will be necessary to single-family detached neighborhoods to receive feedback on the possibility of allowing duplexes more broadly if council instructs staff to move forward with these changes.

Interest groups: It is imperative that this project focus on targeted stakeholder outreach as well. This includes interested groups such as PLAN Boulder, Better Boulder, the Boulder Chamber of Commerce, and the following other focus groups:



- Hill Revitalization Working Group (HRWG)
- University of Colorado, Local Government & Community Relations, Office of Government and Community Engagement
- Boulder Housing Network
- Community Connectors-in-Residence (CC-in-R)

Logistics: Schedule a consultation with CC-in-R through the engagement team after drafting the racial equity instrument.

WEBSITE UPDATES

Purpose: The existing project website will be maintained and updated throughout the remainder of the project to inform the public of the project, provide updates, provide dates to Council and Board meetings and public hearings and links to any engagement opportunities.

Logistics: Work with communications staff to make updates as needed to the website.

NEWSLETTER AND EMAIL UPDATES

Purpose: Updates on the project will be provided to interested parties

Logistics: Staff will work with communications staff to draft content for the planning newsletter. Additional email updates will be provided on an as-needed basis. Staff will work with both communications and engagement teams on messaging in emails.

CHANNEL 8

Purpose: Channel 8 will be utilized to promote engagement opportunities and raise awareness for any potential zoning for affordable housing changes.

Logistics: Staff will work with communications staff to create and support content for Channel 8. This may involve creating a video that is posted on Channel 8 to inform the public about the project.

NEXTDOOR

Purpose: Nextdoor is another method to promote opportunities to provide input about the project and raise awareness that has a wide reach that may reach people who are not otherwise involved or engaged in planning-related topics. Neighborhoods to contact through NextDoor are:

⇒ Mapleton, Whittier, Goss Grove and low-density portions of North, East and South Boulder

Logistics: Staff will work with communications staff to craft posts to promote engagement efforts.

OPEN HOUSES

Purpose: Later in the project when options are being more fully developed and analyzed, open houses will be held virtually or in person to provide updates on the project, present options, and receive feedback on the options. These offer a way for the public to hear summaries of the proposed changes, ask questions of staff, and suggest modifications prior to the formal adoption process.

Logistics: P&DS staff will collaborate with engagement staff to set up virtual meetings and with communications staff to promote them online.



PUBLIC HEARINGS AND UPDATES TO BOARDS

There will be a number of public hearings and updates provided to City Council during the duration of the project. These are other opportunities for the public to share their thoughts and concerns about the project.

Project Scope and Timeline for Phase 2.0

PLANNING STAGE | Q4 2023 / Q1 2024

- Scoping of council requested changes (Nov. – Dec. 2023)
- Additional analysis of other potential changes to remove zoning barriers (Nov. – Jan. 2024)
- Prepare information packet to City Council on Phase Two (Feb. 2024)

Deliverables

- *Information Packet to City Council*

SHARED LEARNING STAGE | Q1 2024

- Analyze potential suggested options by City Council (Feb-Mar 2024)
- Check in with City Council on scope of proposed changes and results of feedback. Receive direction on potential changes (April. 2023)
- Consider prior community feedback on project and prepare community engagement plan for City Council consideration

Deliverables

- *Study Session with City Council, and meeting materials*

OPTIONS STAGE | Q2 2024

- Move forward with options analysis and refinement of preferred options based on City Council direction (April-May 2024)
- Update Planning Board and Housing Advisory Board (HAB) of potential options and receive feedback (May-June 2024)
- Outreach to the community on the preferred options (April - June 2024)
- If necessary, check in with City Council on additional direction (June 2024)

Deliverables

- *Analysis of potential code changes*
- *Summary of board feedback*
- *Summary of community feedback*
- *Matters check in memo to council*

DECISION STAGE | Q3 2024

- Create a draft ordinance (June 2024)



- Solicit additional feedback from stakeholder groups and neighborhood associations (June-July 2024)
- Bring forward draft ordinance to Housing Advisory Board (August 2024)
- Bring forward draft ordinance to Planning Board (September 2024)
- First reading of draft ordinance at City Council (October 2024)
- Second reading of draft ordinance at City Council (October 2024)

Deliverables

- *Draft ordinance*
- *Housing Advisory Board, Planning Board and City Council memoranda*

POST ADOPTION & PROCESS ASSESSMENT STAGE | Q4 2024

- Communicate with public and stakeholders about changes that occurred
- Debrief successes and challenges encountered
- Identify what worked and what didn't
- Evaluate the degree adopted changes accomplished the project's goals

Schedule for 2023 and 2024

	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	August	September	October
Planning Stage												
Shared Learning Stage												
Options Stage												
Decision Stage												

Project Team & Roles

Team Goals

- Follow City Council and Planning Board direction relative to changes to the code to obtain more affordable or modest-sized housing
- Consult with the community in the formulation of new standards/criteria and incorporate relevant ideas following a Public Engagement Plan and convey feedback to the Planning Board and City Council.
- Solution must be legal, directly address the purpose and issue statement, and should be a simple solution with community support.

Critical Success Factors

- Conduct a meaningful and inclusive public engagement process.
- Address the goals related to increasing housing options in the community while respecting community character.



Expectations

Each member is an active participant by committing to attend meetings; communicate the team's activities to members of the departments not included on the team; and demonstrate candor, openness, and honesty. Members will respect the process and one another by considering all ideas expressed, being thoroughly prepared for each meeting, and respecting information requests and deadlines.

Potential Challenges/Risks

The primary challenge of this project is making sure that proposed code changes avoid land use impact on other uses, unintended consequences and over complication of the code.

Administrative Procedures

The core team will meet regularly throughout the duration of the project. An agenda will be set prior to each meeting and will be distributed to all team members. Meeting notes will be taken and will be distributed to all team members after each meeting.

CORE TEAM		
Executive Sponsor	Charles Ferro	
Executive Team	Brad Mueller, Charles Ferro, Karl Guiler	
Project Leads		
Project Manager	Karl Guiler	
Comprehensive Planning	Kathleen King	
Housing	Jay Sugnet, Hollie Hendrikson or Sloane Walbert	
Working Group		
Legal	Hella Pannewig	
Communications	Cate Stanek	Strategy and tactics
I.R.	Sean Metrick	Mapping and land use analysis assistance
Community Vitality	NA	Not needed for this project
Racial Equity	Aimee Kane	
Community Engagement	Vivian Castro-Wooldridge/ Brenda Ritenour	Consulting role

Executive Sponsor: The executive sponsor provides executive support and strategic direction. The executive sponsor and project manager coordinates and communicates with the executive team on the status of the project, and communicate and share with the core team feedback and direction from the executive team.

Project Manager: The project manager oversees the development of the Land Use Code amendment. The project manager coordinates the core team, manages any necessary consultant firms, and provides overall project management. The project manager will be responsible for preparing (or coordinating) agendas and notes for the core team meetings, coordinating with team members and consultants on the project, managing the project budget, and coordinating public outreach and the working group. The



project manager coordinates the preparation and editing of all council/board/public outreach materials for the project, including deadlines for materials.

Core Team Members: Team leaders will coordinate with the project manager on the consultant work efforts and products, and will communicate with the consultants directly as needed. Core Team members will assist in the preparation and editing of all council/board/public outreach materials including code updates.

Communications Specialist: The communications specialist is responsible for developing and creating internal and external communications output such as press releases, major website updates and additions, talking points, etc., and will provide advice about and support of public outreach. The communications specialist works with the project managers and core team to develop a communications plan that aligns with the project's goals and larger outreach strategy. The communications specialist will be responsible for promoting events through a variety of methods. The communications specialist assists the manager and core team in advising on any public outreach methods as well as editing and producing outreach material that makes the project accessible to members of the public.

Engagement Specialists: Help advise on engagement strategies; review engagement plan and engagement questions; review messaging together with Communications Specialist; support planning for consultations as needed; provide support during consultations as needed and capacity allows

Project Costs/Budget

No consultant costs have been identified for this project at this time. The project will be undertaken by P&DS staff.

Decision-makers

- **City Council:** Decision-making body.
- **Planning Board:** Will provide input throughout the process, and make a recommendation to council that will be informed by other boards and commissions.
- **City Boards and Commissions:** Will provide input throughout process and ultimately, a recommendation to council around their area of focus.

Boards & Commissions

City Council – Will be kept informed about project progress and issues; periodic check-ins to receive policy guidance; invited to public events along with other boards and commissions. Will ultimately decide on the final code changes.

Planning Board – Provides key direction on the development of options periodically. Will make a recommendation to City Council on the final code changes.

Advisory Boards: Identify and resolves issues in specific areas by working with the following boards/commissions:


- Housing Advisory Board



Appendix: Engagement Framework

BOULDER'S ENGAGEMENT SPECTRUM

The city will follow a modified version of IAP2's engagement spectrum to help identify the role of the community in project planning and decision-making processes.

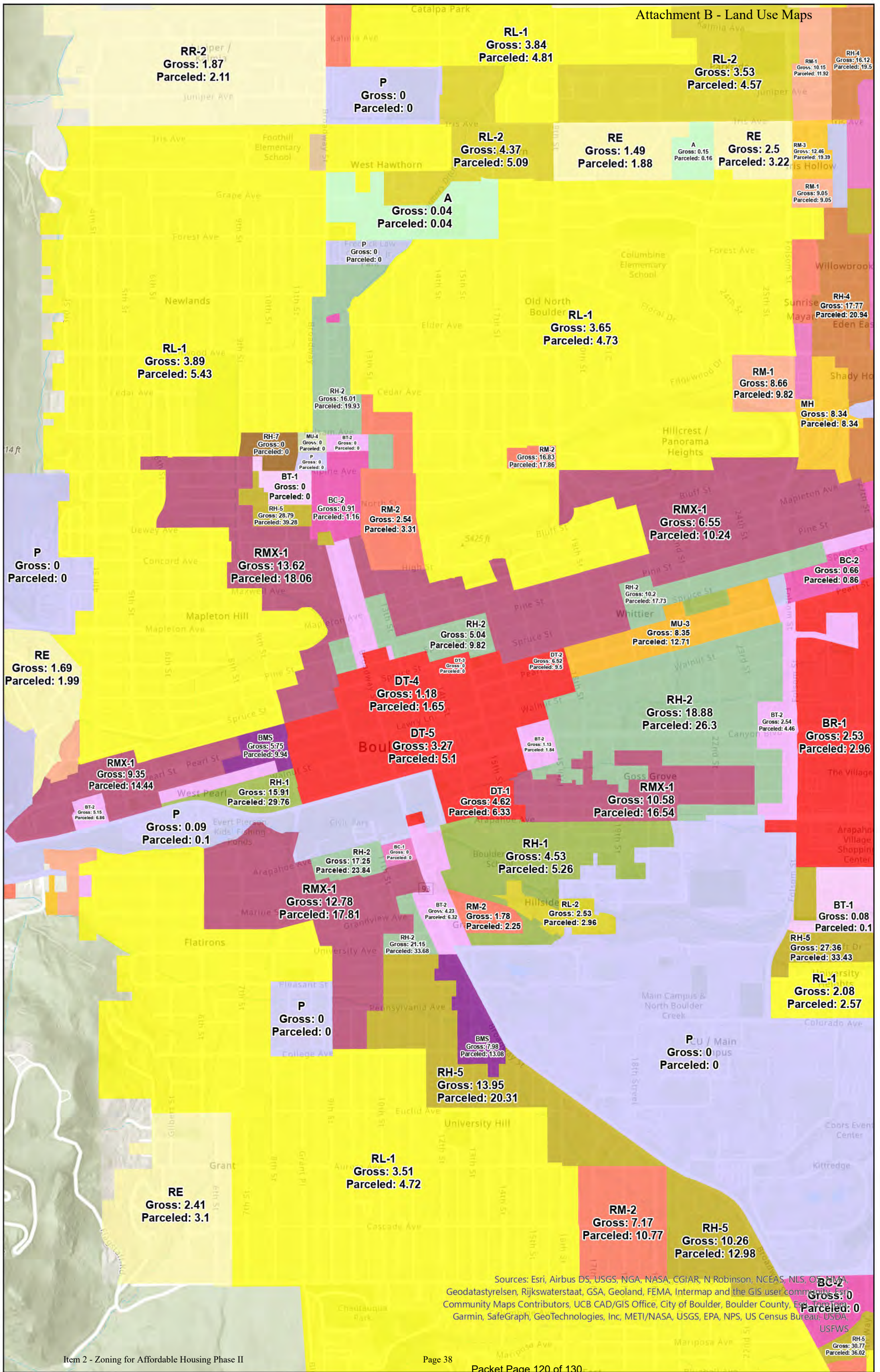
INCREASING IMPACT ON THE DECISION 

	INFORM	CONSULT	INVOLVE	COLLABORATE
PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding a problem, alternatives, opportunities and/or solutions.	To obtain public feedback on public analysis, alternatives and/or decisions.	To work directly with the public throughout a process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and identification of a preferred solution.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge your concerns and aspirations, and share feedback on how public input influenced the decision. We will seek your feedback on drafts and proposals.	We will work with you to ensure that your concerns and aspirations are reflected in any alternatives and share feedback on how the public input influenced the decision.	We will work together with you to formulate solutions and to incorporate your advice and recommendations into the decisions to the maximum extent possible.

[City of Boulder Engagement Strategic Framework](#)



[Boulder's Decision Making Process](#)



Attachment C - Detailed zoning analysis of RL-1, RR-1 and RR-2 zones with a variety of modified density calculations

Zoning	Zoning Description	Gross Acres	Parceled Acres	Existing Gross DU/Acre	Existing Parceled DU/Acre	Total Existing Dwelling Units	Total Potential Dwelling Units at Gross Max Density	Additional Potential Dwelling Units at Gross Max Density	Total Potential Dwelling Units at Parceled Max Density	Additional Potential Dwelling Units at Parceled Max Density	Max BVCP Land Use Density	Density Check Gross	Density Check Parceled	Existing Parcels With DU 10,652 of 10,950 total (391 have 2 or more DU currently)	Number of Parcels that can have 2 units at 5,000 sqft per unit	Number of Parcels that can have 2 units at 4,000 sqft per unit	Number of Parcels that can have 2 units at 3,500 sqft per unit	Number of Parcels that can have 2 units at 3,250 sqft per unit	Number of Parcels that can have 2 units at 3,000 sqft per unit
RL-1	Residential-Low 1	3,440	2,605	3.26	4.31	11,224	20,500	9,276	15,600	4,376		6	6.0	6.0	2,128	4,325	8,008	9,310	10,288
						391									19%	39%	71%	83%	92%
															74	142	195	213	330

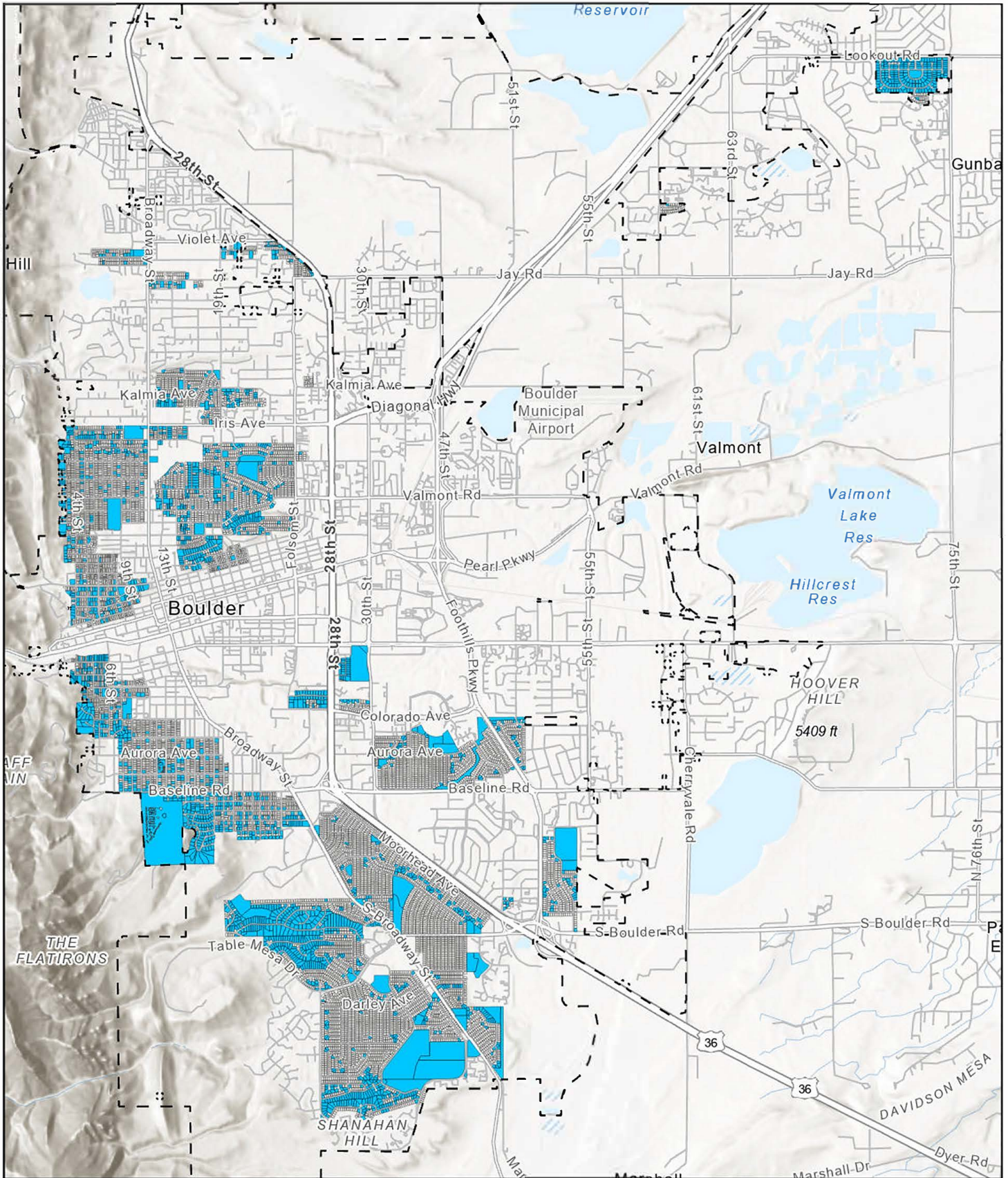
Zoning	Zoning Description	Gross Acres	Parceled Acres	Existing	Existing	Total	Total Potential	Additional	Total Potential	Additional Potential	Max BVCP Land Use Density	Density Check Gross	Density Check Parceled	Existing Parcels With DU	Number of	Number	Number	Number	Number	Minimum SQFT Per DU per Code
				Gross DU/Acre	Parceled DU/Acre	Existing Dwelling Units	Dwelling Units at Gross Max Density	Potential Dwelling Units at Gross Max Density	Dwelling Units at Parceled Max Density	Dwelling Units at Parceled Max Density					Parcels that can have 2 units at 5,000 sqft per unit	Parcels can have 2 units at 4,000 sqft per unit	Parcels can have 2 units at 3,500 sqft per unit	Parcels can have 2 units at 3,250 sqft per unit	Parcels can have 2 units at 3,000 sqft per unit	
RL-1	Residential-Low 1	3,440	2,605	3.26	4.31	11,224	20,500	9,276	15,600	4,376	6	6.0	6.0	10,652 of 10,950 total (391 have 2 or more DU currently)	2,128	4,325	8,008	9,310	10,288	
															Percent of Total Existing Parcels (10,950):					
															19%	39%	73%	85%	94%	
															Number of total on line 2 that currently have 2 or more DU:					
															74	142	195	213	330	

Zoning	Zoning Description	Gross Acres	Parceled Acres	Existing Gross DU/Acre	Existing Parceled DU/Acre	Total Existing Dwelling Units	Total Potential Dwelling Units at Gross Max Density	Additional Potential Dwelling Units at Gross Max Density	Total Potential Dwelling Units at Parceled Max Density	Additional Potential Dwelling Units at Parceled Max Density	Max BVCP Land Use Density	Density Check Gross	Density Check Parceled	Existing Parcels With DU	Number of	Number	Number	Number		
															Parcels that can have 2 units at 2,500 sqft per unit	Parcels can have 2 units at 2,000 sqft per unit	Parcels can have 2 units at 1,500 sqft per unit	Parcels can have 2 units at 1,000 sqft per unit		
RM-1	Residential-Medium 1	609	501	7.02	8.53	4,275	8,528.80	4,254	7,018.21	2,743	14	14	14	3,132 (1,323 without condos) of 3,538 total (62 have 2 or more DU currently and 2,215 are already condos)	504	827	1,061	1,173	<--Parcels without condos	3000
															Percent of Total Existing Parcels:					
															14%	23%	30%	33%		
															Number of total on line 6 that currently have 2 or more DU:					
															45	45	46	48		

Zoning	Zoning Description	Gross Acres	Parceled Acres	Existing	Existing	Total	Total Potential	Additional	Total Potential	Additional Potential	Max BVCP Land Use Density	Density Check Gross	Density Check Parceled	Existing Parcels With DU	Number of	Number	Number	Number	Number	Minimum SQFT Per DU per Code
				Gross DU/Acre	Parceled DU/Acre	Existing Dwelling Units	Dwelling Units at Gross Max Density	Potential Dwelling Units at Gross Max Density	Dwelling Units at Parceled Max Density	Dwelling Units at Parceled Max Density					Parcels that can have 2 units at 25,000 sqft per unit	Parcels can have 2 units at 20,000 sqft per unit	Parcels can have 2 units at 15,000 sqft per unit	Parcels can have 2 units at 10,000 sqft per unit	Parcels can have 2 units at 5,000 sqft per unit	
RR-1	Residential-Rural 1	143	117	0.85	1.03	121	285.44	164	234.62	114	2	2	2	120 of 134 total (1 parcels has 2 or more DU)	7	37	110	124	133	30000
															Percent of Total Existing Parcels:					
															5%	28%	82%	93%	99%	
															Number of total on line 10 that currently have 2 or more DU:					
															n/a	n/a	n/a	n/a	n/a	
RR-2	Residential-Rural 2	170	147	1.53	1.76	260	340.22	80	294.74	35	2	2	2	254 of 261 total (3 parcels have 2 or more DU)	9	33	80	132	229	30000
															Percent of Total Existing Parcels:					
															3%	13%	31%	51%	88%	
															Number of total on line 13 that currently have 2 or more DU:					
															n/a	n/a	n/a	n/a	n/a	

MAP 1

Attachment D - Maps 1 through 8



5,000 SQFT of Lot Area Per Unit

■ RL-1 Parcels That Could Add a Unit at 5,000 SQFT of Lot Area Per Unit

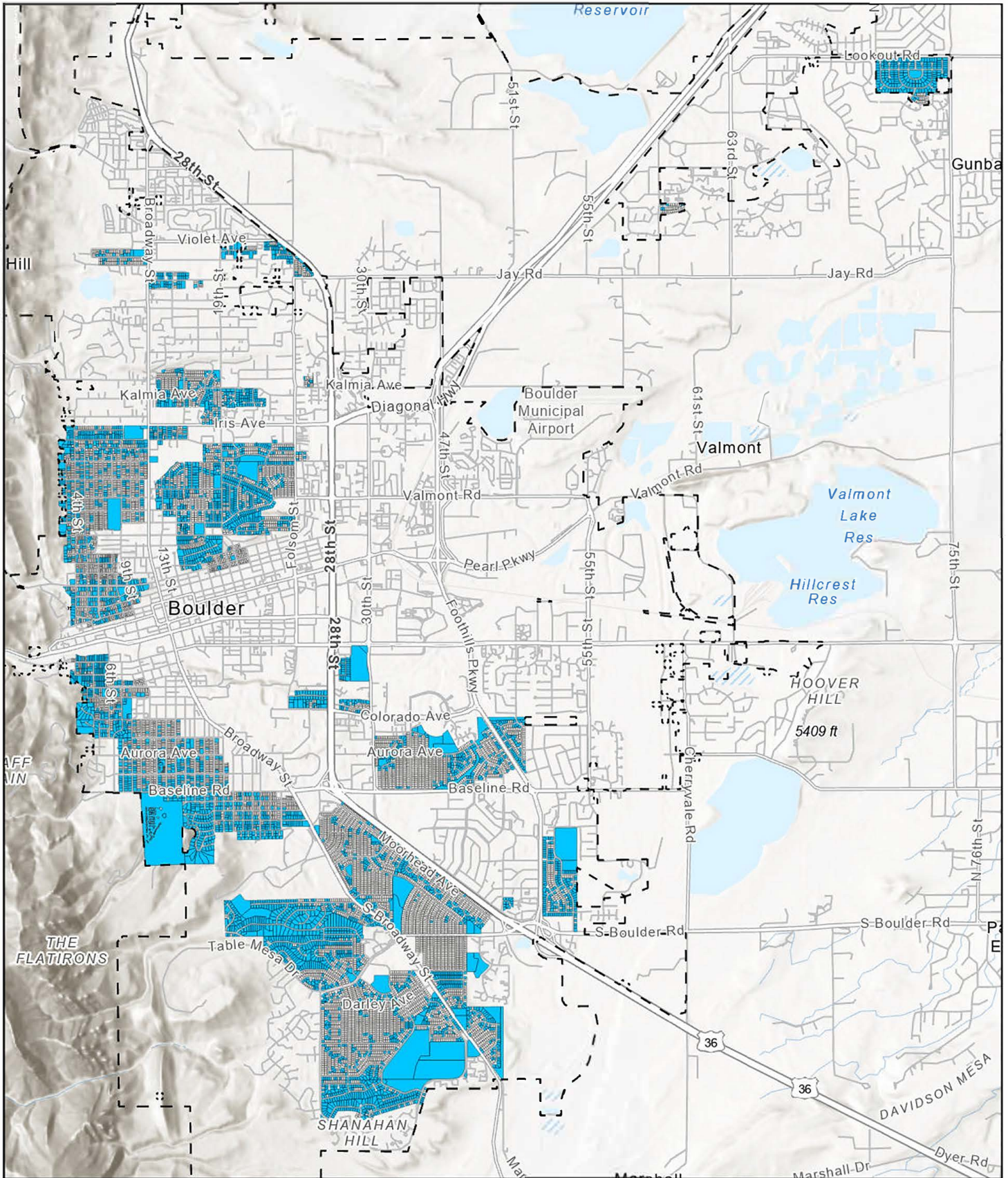
RL-1 Parcels

City Limits for Affordable Housing Phase II



MAP 2

Attachment D - Maps 1 through 8



 RL-1 Parcels That Could Add a Unit at 4,000 SQFT of Lot Area Per Unit

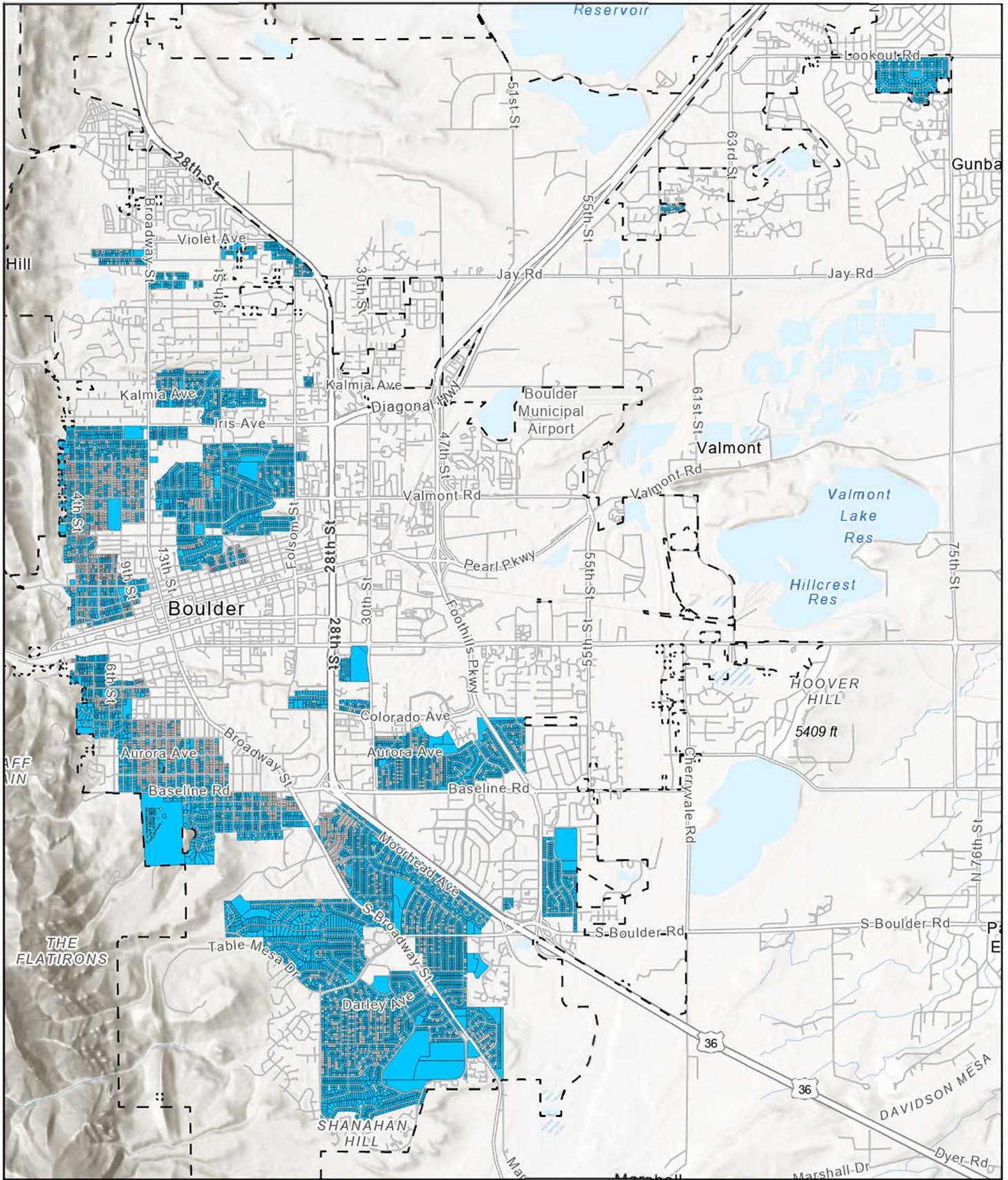
RL-1 Parcels

City Limits



MAP 3

Attachment D - Maps 1 through 8



 RL-1 Parcels That Could Add a Unit at 3,500 SQFT of Lot Area Per Unit

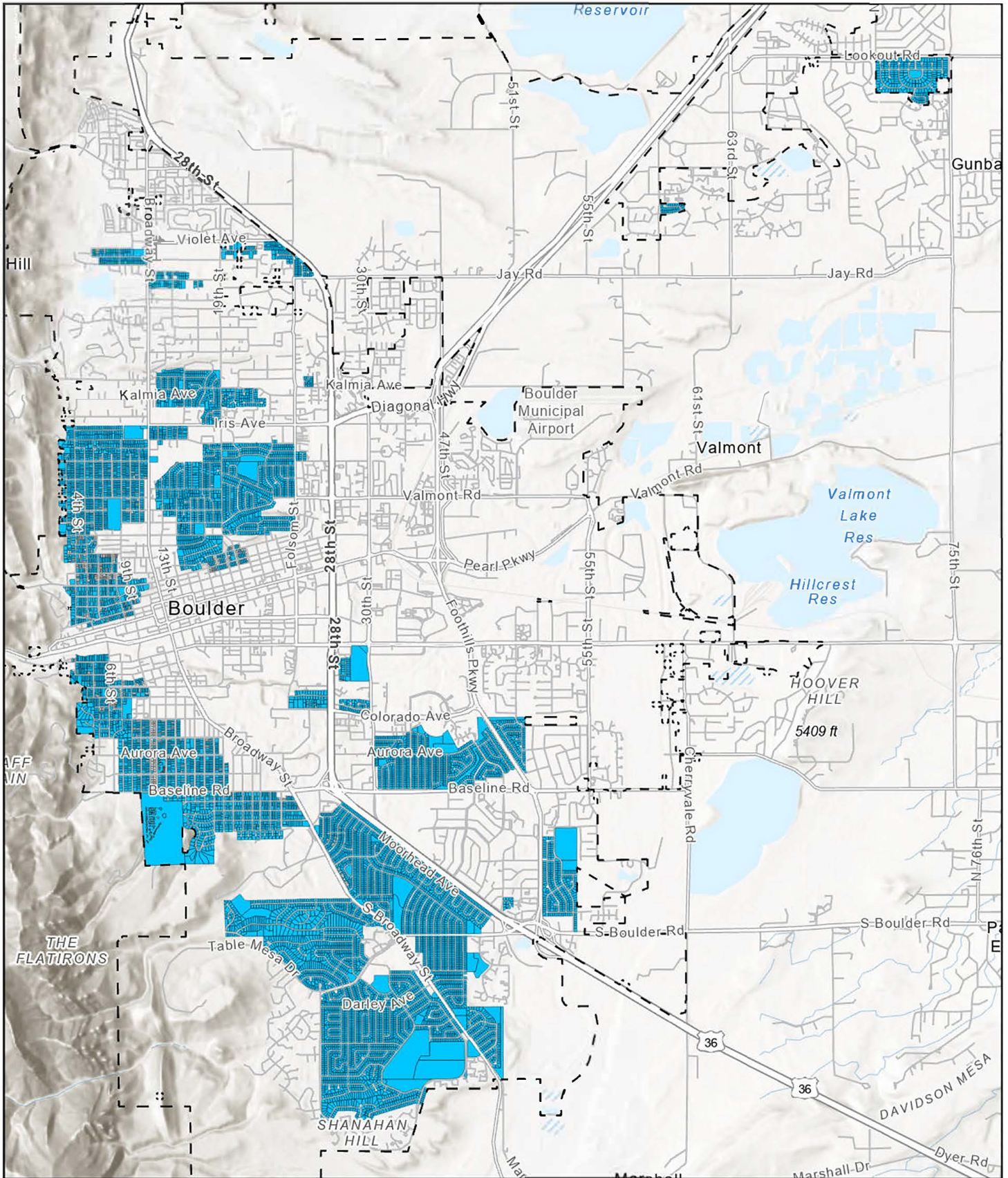
RL-1 Parcels

City Limits



MAP 4

Attachment D - Maps 1 through 8



RL-1 Parcels That Could Add a Unit at 3,000 SQFT of Lot Area Per Unit

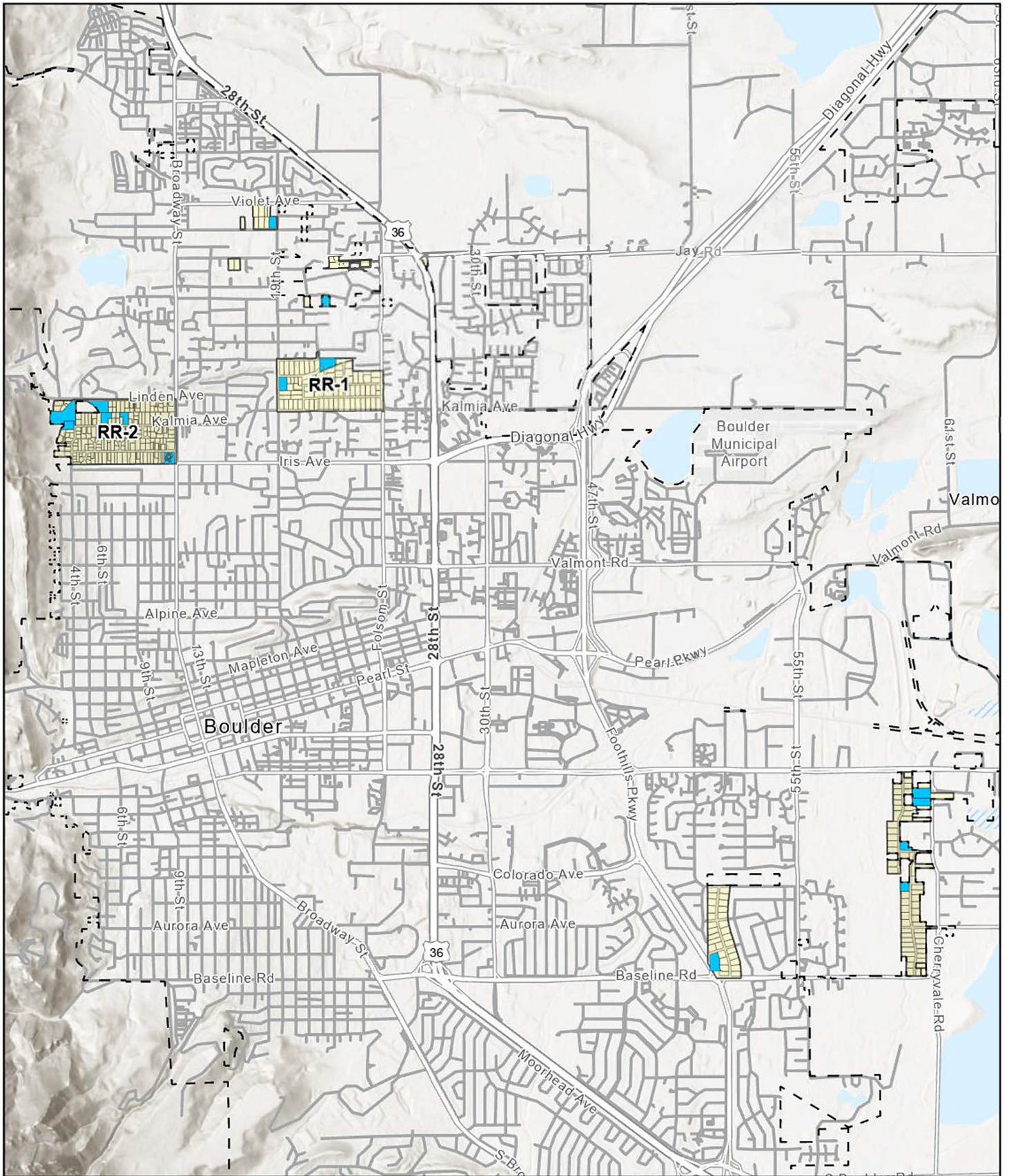
RL-1 Parcels

City Limits



MAP 5

Attachment D - Maps 1 through 8

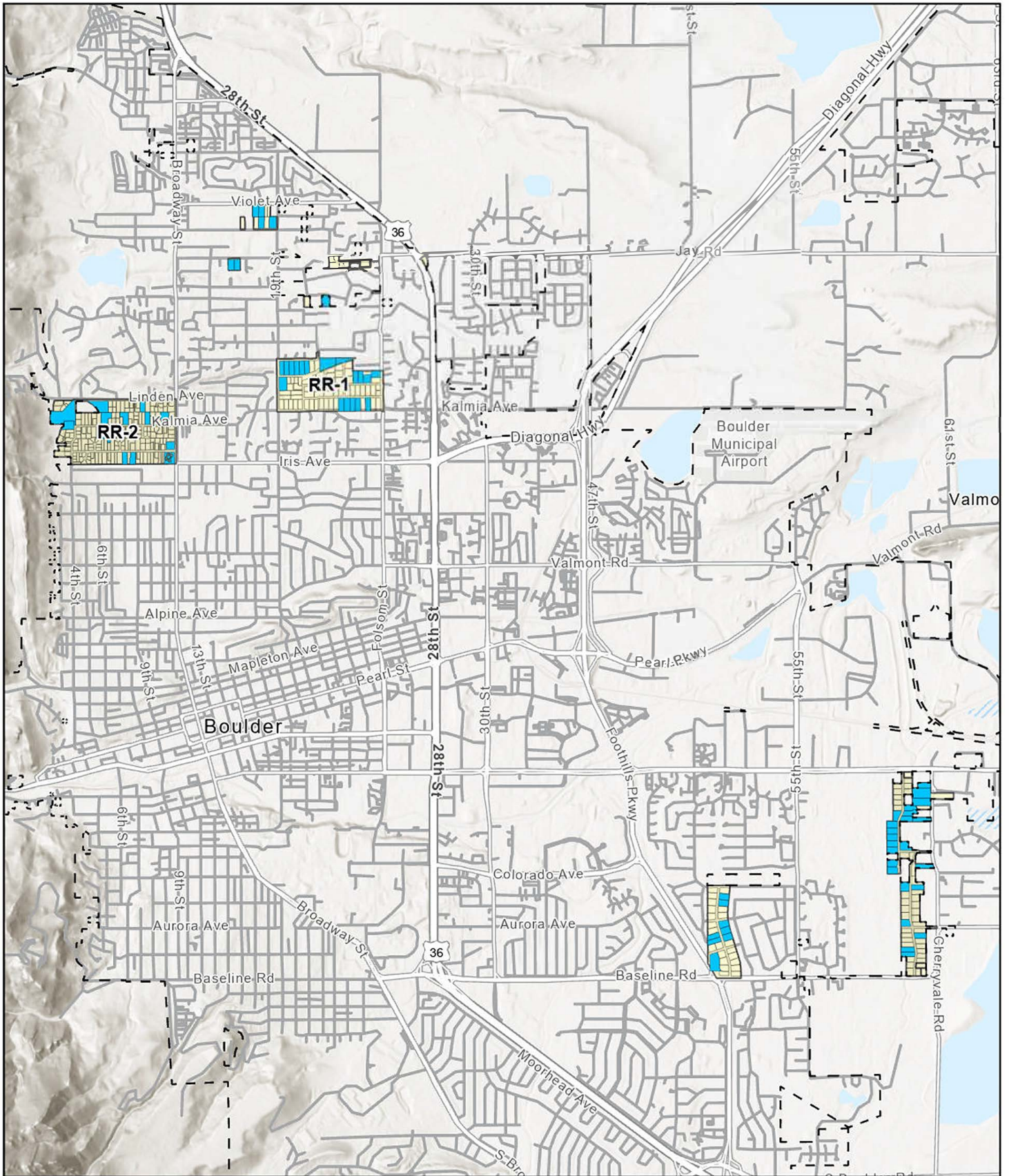


- RR Parcels That Could Add a Unit at 25,000 SQFT of Lot Area Per Unit RR-1 and RR-2 Zoning Districts
- RR-1 Residential - Rural 1 (RR-E)
- RR-2 Residential - Rural 2 (RR1-E)
- City Limits



MAP 6

Attachment D - Maps 1 through 8

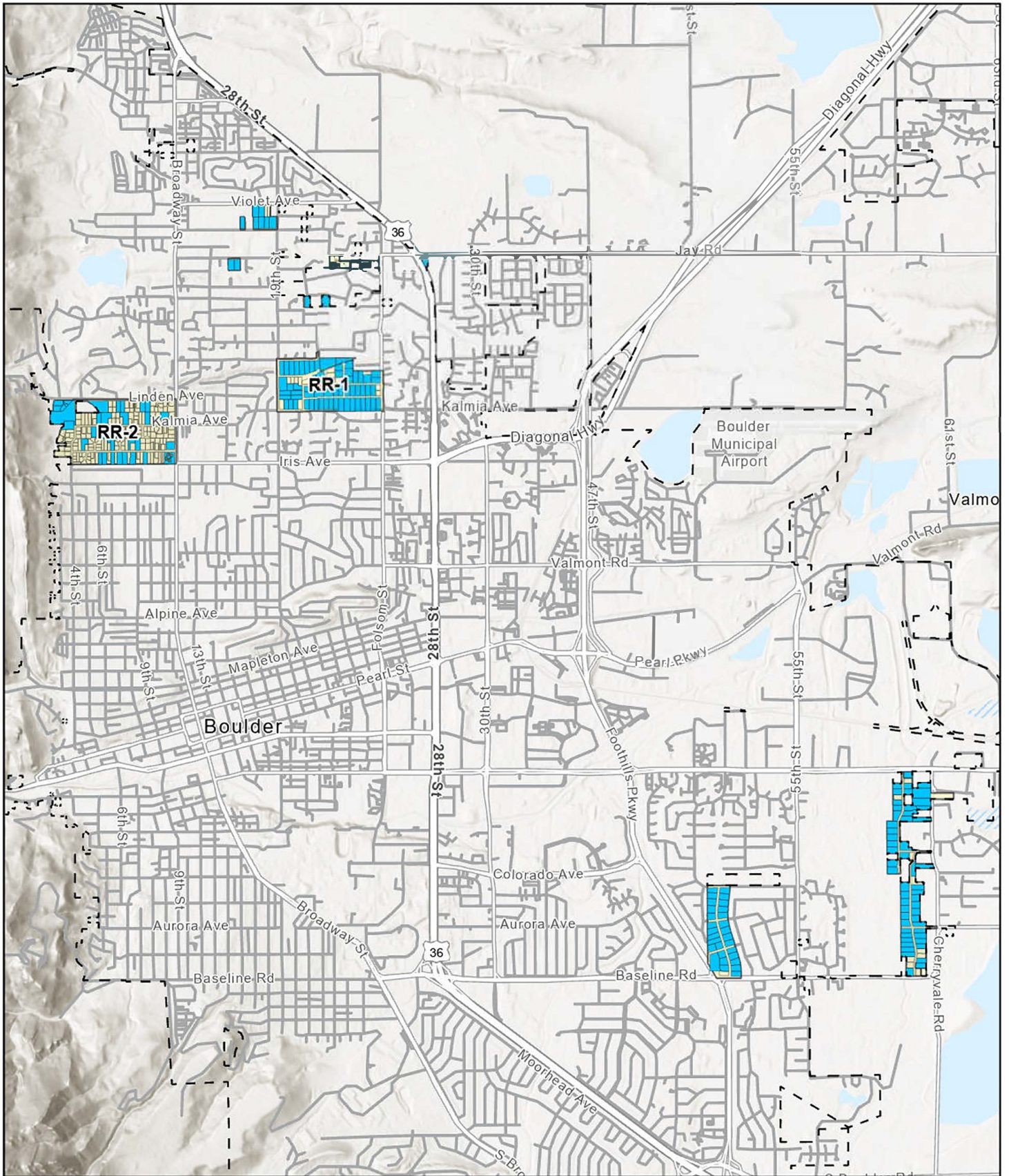


- RR-1 Residential - Rural 1 (RR-E)
- RR-2 Residential - Rural 2 (RR1-E)
- RR Parcels That Could Add a Unit at 20,000 SQFT of Lot Area Per Unit RR-1 and RR-2 Zoning Districts
- RR Parcels
- City Limits



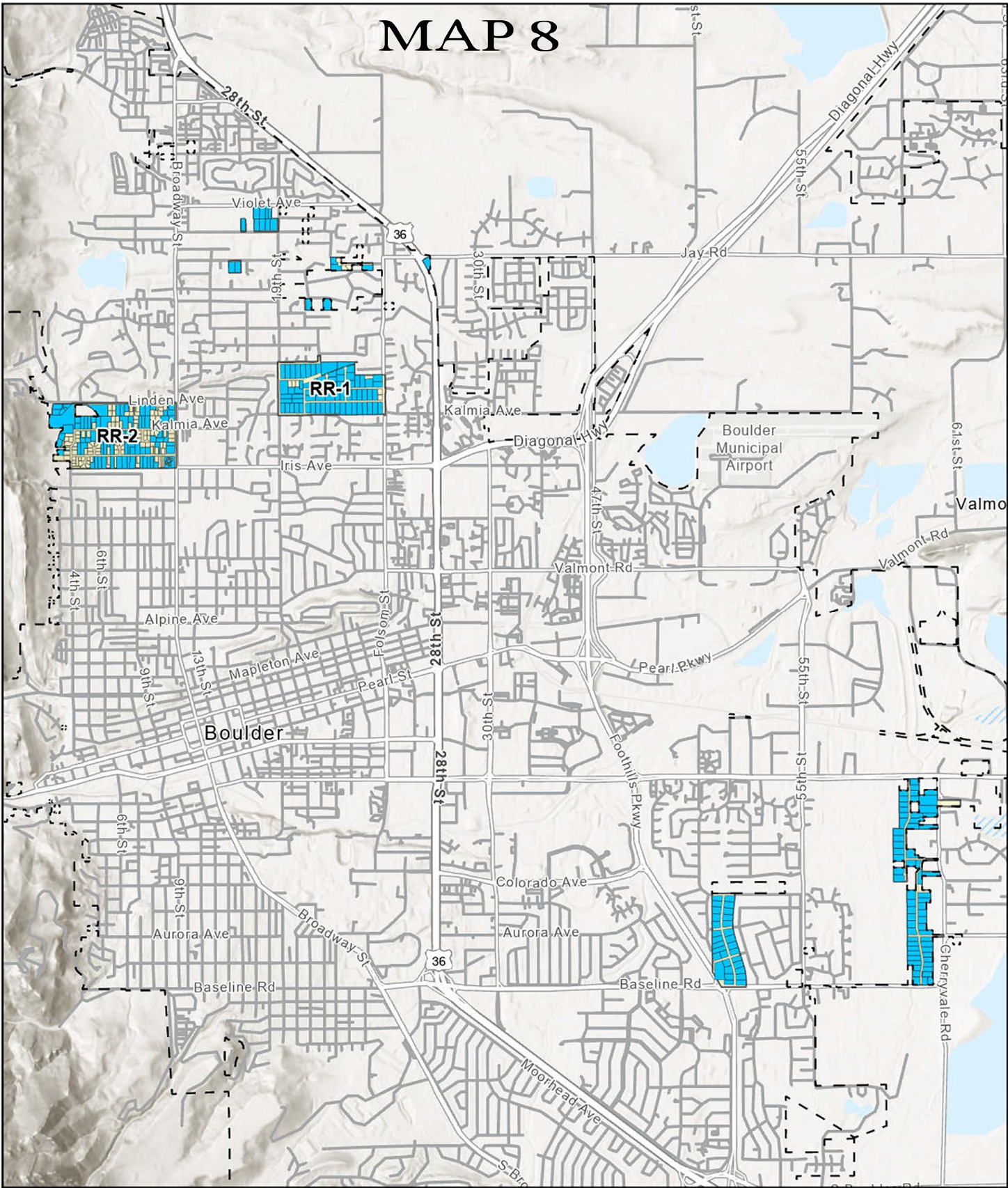
MAP 7

Attachment D - Maps 1 through 8



- RR Parcels That Could Add a Unit at 15,000 SQFT of Lot Area Per Unit RR-1 and RR-2 Zoning Districts
- RR-1 Residential - Rural 1 (RR-E)
- RR-2 Residential - Rural 2 (RR1-E)
- City Limits





- RR Parcels That Could Add a Unit at 10,000 SQFT of Lot Area Per Unit RR-1 and RR-2 Zoning Districts
- RR Parcels
- City Limits
- RR-1 Residential - Rural 1 (RR-E)
- RR-2 Residential - Rural 2 (RR1-E)

