

ORDINANCE NO. 27 - 2021

AN ORDINANCE ADDING A NEW ARTICLE VI TO CHAPTER 14 (NUISANCES) OF THE CODE OF ORDINANCES OF THE CITY OF ALAMOSA CONCERNING MITIGATION OF PUBLIC NUISANCES CREATED BY THE USE OF PROPERTY IN CONNECTION WITH CERTAIN CRIMES AND ALLOWING FOR THE CLOSURE OF SUCH PROPERTY

WHEREAS, Criminal activity on a property is a public nuisance, and the abatement of local public nuisances for the protection of public health, safety and welfare is a matter of purely local and municipal concern; and

WHEREAS, the City has an interest in encouraging property owners to be vigilant in preventing criminal activity in or on their property, especially drug and prostitution related activity, and regular disturbance of the peace; and

WHEREAS, the remedies provided in this new article are designed to fulfill that purpose to make property owners vigilant in preventing crime on or in their property; to make property owners responsible for the use of their property by tenants, guests and occupants; and to otherwise deter criminal activity on private property within the city limits.

NOW, THEREFORE, BE IT HEREBY ORDAINED by the City Council of the City of Alamosa, Colorado:

Section 1. Addition of a new Article VI to Chapter 14 of the Code of Ordinances of the City of Alamosa. A new Article VI is added to Chapter 14 to read as follows:

ARTICLE VI - PROPERTY USED IN CONNECTION WITH CERTAIN CRIMES

Sec 14-100. - Legislative purpose. The abatement of local public nuisances for the protection of public health, safety and welfare is a matter of purely local and municipal concern. Criminal activity on a property is a public nuisance. The purpose of this Article VI is to eliminate public nuisances created by the use of property in connection with certain crimes. The remedies provided in this article are designed to fulfill that purpose to make property owners vigilant in preventing crime on or in their property; to make property owners responsible for the use of their property by tenants, guests and occupants; and to otherwise deter criminal activity on private property within the city limits.

Sec.14-101. - Definitions.

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

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

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

- (1) Prostitution within the meaning of section 11-79 of this *Code* and/or within the meaning of C.R.S. §§ 18-7-201, 18-7-202, 18-7-203, 18-7-204, 18-7-205, 18-7-206;
- (2) The keeping of a bawdy house within the meaning of section 11-76;
- (3) Human trafficking within the meaning of C.R.S. §§ 18-3-503 or 18-3-504;
- (4) Professional gambling within the meaning of C.R.S. § 18-10-102(8); gambling on premises, C.R.S. § 18-10-102(5); or keeping of a gambling record, C.R.S. § 18-10-102(7);
- (5) The unlawful manufacture, cultivation, growth, production, ~~or processing, or possession~~ of marijuana within the meaning of Chapter 4, Article VI of this *Code*;
- (6) The unlawful manufacture, cultivation, growth, production, processing, sale, distribution, ~~storage or use, or possession for any unlawful manufacture, sale, distribution or use~~ or storage of a controlled substance, C.R.S. § 18-18-102(5), a controlled substance analog, C.R.S. § 18-18-102(6), or an imitation controlled substance, C.R.S. § 18-18-420(3); except for possession of less than 16 ounces of marijuana.
- (7) Unlawful manufacture, sale, or distribution of drug paraphernalia, C.R.S. § 18-18-426;
- (8) Prostitution of a child, C.R.S. § 18-7-401(7); soliciting for child prostitution, C.R.S. § 18-7-402; pandering of a child, C.R.S. § 18-7-403; keeping a place of child prostitution, C.R.S. § 18-7-404; pimping a child, C.R.S. § 18-7-405; or inducement of child prostitution, C.R.S. § 18-7-405.5; or
- (9) Sexual exploitation of children, C.R.S. § 18-6-403.
- ~~(10) encouraging congregation of people in a manner which repeatedly encourages a disturbance of the peace, or where the conduct of persons in or about the structure is such as to repeatedly annoy or disturb the peace of the occupants of or persons attending such place, or the residents in the vicinity, or the passersby on the public street or highway~~
- ~~(11) furnishing or selling intoxicating liquor or fermented malt beverages to minors.~~

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

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

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

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Owner means any person, agent, firm, corporation, association, or partnership shown by the records of the Alamosa County Assessor to have an interest in the structure, including:

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

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

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

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

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

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Sec. 14-102. - Criminal nuisance property prohibited.

- (a) It is unlawful for any structure to be employed or used as criminal nuisance property within the city. If a structure is found to be used or employed in violation of this subsection, it is subject to closure for a period of up to 364 days.
- (b) It is unlawful for any person to employ, use, or make available or allow the employment or use of structures as criminal nuisance property within the city. Any person who fails to voluntarily cease the use or occupancy of a structure as required by this division may be removed pursuant to a court order after notice and an opportunity to be heard by the court having jurisdiction of an action brought pursuant to this division. The court of original jurisdiction for these matters shall be the municipal court of Alamosa.

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Sec. 14-103. - Closure procedure; commencement of actions

- (a) When the chief of police believes that a structure is being employed or used in violation of section 14-102, the chief of police may commence proceedings to cause the closure of the structure. Except in cases brought pursuant to section 14-106, if the chief of police wishes to commence proceedings:
 - (1) The chief of police shall notify the owner in writing that the structure has been determined to be criminal nuisance property. The notice shall contain the following information:

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- a. The street address or a legal description sufficient for identification of the premises on which the structure is located.
- b. A statement that the chief of police has found the structure to be in violation of this article with a concise description of the conditions leading to his or her findings.
- c. A statement of what is needed to cure the violation and notice that if the violation is not cured within 30 days, or, if the nature of the violation is such that longer than 30 days is necessary to cure, a cure is not being diligently pursued, the city may proceed to municipal court to seek an injunction requiring closure of the structure for up to 364 days.

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- (2) A copy of the notice shall be served on the owner or, if applicable, a resident manager or property manager for the property on which the structure is located at least ~~ten~~30 days prior to the commencement of any judicial action by the city. Service shall be made personally or, if personal service cannot be achieved, by mailing a copy of the notice by regular and by certified mail, postage prepaid, with return receipt requested, to the person at his or her address as it appears in the records of the Alamosa County Assessor or as may be otherwise known to the chief of police.
- (3) A copy of the notice shall also be served on the occupant of the structure not less than ~~ten~~30 days prior to the commencement of any judicial proceeding and shall be made either personally or by mailing a copy of the notice by regular and by certified mail, postage prepaid, with return receipt requested, to him or her at the structure.
- (4) A copy of the notice shall also be posted upon the property not less than ~~ten~~30 days prior to the commencement of any judicial proceedings.
- (5) The failure of any person or owner to receive actual notice of the determination by the chief of police shall not invalidate or otherwise affect the proceedings under this division.

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- (b) If the subject property continues as a criminal nuisance property in spite of the giving of the notices described in subsection (a) of this section, and the owner or manager of the property is not diligently pursuing cure, the city may commence civil proceedings in municipal court seeking the closure of the structure as well as the imposition of civil penalties against any or all the owners thereof and any such other relief as may be deemed appropriate.
- (c) With respect to the initiation of civil proceedings, unknown persons who may claim an interest in the property, persons whose whereabouts are unknown despite a diligent good faith search, and persons upon whom the plaintiff has been unable to effect personal service despite diligent good faith efforts may be served pursuant to a court order by publishing a copy of a summons twice in a newspaper of general circulation. The summons shall describe the property and state where the complaint and attendant documents may be obtained, and a party shall have thirty-five days after the last publication date to respond.

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Sec. 14-104. - Enforcement of closure order; costs; civil penalty.

- (a) If the court finds that a structure constitutes criminal nuisance property as defined in this division, the court may order that it shall be closed for any period of up to 364 days, and that the owner pay to the city a civil penalty to be determined by the court taking into consideration the factors enumerated in subsection (d) of section 14-105.
- (b) The court may also authorize the city to physically secure the structure against use or occupancy if the owner fails to do so within the time specified by the court. If the city is authorized to secure the property, all costs reasonably incurred by the city to effect a closure shall be made an assessment lien upon the property. As used in this subsection, the term "costs" means those costs actually incurred by the city for the physical securing of the structure. The city shall prepare a statement of costs to be used for the labor and materials and administrative fees.
- (c) In addition to the lien referenced above, any person who is assessed the costs of closure or a civil penalty by the court shall be personally liable for the payment thereof to the city.
- (d) Should the court order closure of the structure, the owner shall continue to provide for the maintenance, environmental clean-up, sanitation, utilities, insurance, and security of the property during the period of closure.

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Sec. 14-105. - Burdens of proof; defenses; mitigation of civil penalty.

- (a) Except in a proceeding under section 14-106, if, after notice but prior to the commencement of proceedings pursuant to this division, an owner specifically stipulates with the city that he or she will pursue a course of action as the parties agree will necessarily abate the conditions giving rise to the violation, the city may agree to stay the commencement of proceedings. However, if the city reasonably believes the owner is not diligently pursuing the action contemplated by the stipulation, it may then commence proceedings pursuant to this division.
- (b) In an action seeking civil penalties from an owner or the closure of a structure as criminal nuisance property, the city shall have the initial burden of proof to show by a preponderance of the evidence that the structure is a criminal nuisance property.
- (c) In any action brought to enforce the terms of section 14-102, evidence of a structure's general reputation and/or the reputation of persons residing in or frequenting it shall be admissible.
- (d) In establishing the amount of any civil penalty requested, the court may consider any of the following factors, as they may be appropriate, and shall cite those found applicable:
- (1) The actions taken by the owner to mitigate or correct the problem at the structure;
 - (2) The financial condition of the owner;
 - (3) Whether the problem at the structure was repeated or continuous;

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- (4) The magnitude or gravity of the problem;
- (5) The economic or financial benefit accruing or likely to accrue to the owner as a result of the conditions at the structure;
- (6) The cooperativeness of the owner with the city;
- (7) The cost to the city of investigating and correcting or attempting to correct the condition; and
- (8) Any other factor deemed by the court to be relevant.

(e) *Relief to innocent owners—Affirmative defense.* It shall be an affirmative defense to a charge of violation of this Article if the owner of the real property at issue:

- (1) Did not have actual knowledge of the conduct constituting a criminal nuisance property, or notice of an act or circumstance creating the criminal nuisance property; and
- (2) Upon learning of the conduct constituting a criminal nuisance property, took reasonable action to prohibit such use of the property; and
- (3) Fully cooperated with all law enforcement agencies in any investigation and prosecution of the criminal acts relating to the criminal nuisance property; and
- (4) Did not participate in the criminal acts.

(f) The court may require a property owner whose property has been deemed a criminal nuisance property to have the property inspected by city inspectors and Alamosa County or State of Colorado health inspectors, where appropriate, at the owner's expense, for the presence of environmental hazards, prior to the structure being re-occupied.

- (1) If the property is found to have environmental hazards, the owner shall bear the expense to have the hazards remediated.
- (2) The owner shall bear the expense of having a follow-up inspection to confirm the hazards have been remediated.
- (3) During the remediation process, the owner shall continue to provide for the maintenance, environmental clean-up, sanitation, utilities, insurance, and security of the property.

Sec. 14-106. - Closure during pendency of action; emergency closures. If the chief of police determines that the structure is an immediate threat to the public safety and welfare, the city may apply to the court for such immediate ex parte interim relief that is deemed by the chief of police or city attorney to be appropriate. In such an event, the notification procedures set forth in subsection 14-103(a) need not be complied with. The court shall order the forthwith service of the normal pleadings together with a copy of an emergency order authorizing temporary closure of the structure until such time as the defendant property owner petitions the court for reconsideration. The court shall hear such motions for reconsideration at the earliest possible time.

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Sec. 14-107. - Relief from closure order.

(a) An owner of a structure determined to be criminal nuisance property may obtain relief from the court's judgment if the owner:

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- (1) Appears and pays all costs associated with the proceedings under this division;
- (2) Files a bond in such a place and on such form as the court may by order direct in an amount not less than the tax-assessed value of the structure and keeps the bond in force for a period of not less than one year or for such longer period as the court directs; and
- (3) Enters into a stipulation with the city that the owner will immediately abate the conditions giving rise to the criminal nuisance property and prevent the conditions from being established or maintained thereafter. The stipulation will then be made part of the court's file.

(b) If the owner violates the terms of the stipulation, the city may thereafter apply to the court for an order awarding up to the entire amount of the bond to the city as a penalty as well as such other relief, including closure for any additional period of up to 364 days, that is deemed by the court to be appropriate.

Section 2. General Repealer. All other acts, orders, ordinances, resolutions, or portions thereof in conflict with the sections adopted in this ordinance, are hereby repealed to the extent of such conflict.

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Section 3. Recording and Authentication. This ordinance, immediately upon its passage, shall be authenticated by the signatures of the Mayor and City Clerk, recorded in the City book of Ordinances kept for that purposes, and published according to law.

Section 4. Publication and Effective Date. This ordinance shall take effect ten days after publication following final passage. Publication both before and after final passage shall be by the title of this ordinance, which Council determines constitutes a sufficient summary of the ordinance, together with the statement that the full text of the ordinance is available for public inspection and acquisition on the City's website and in the office of the City Clerk.

Section 5. Declaration of Public Interest. This ordinance is necessary to preserve the peace, health, safety, welfare, and to serve the best interest of the citizens of the City of Alamosa, Colorado.

Section 6. Codification. The City Clerk is directed to codify the provisions of this ordinance in the *Code of Ordinances of the City of Alamosa* in substantially the same form as set forth herein.

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INTRODUCED, READ AND APPROVED on first reading the 1st day of December, 2021, and ordered published by title and reference as provided by law with notice of a public hearing to be held for consideration of the adoption of said ordinance on the 15th day of December, 2021, at 7:00 p.m., or as soon thereafter as the matter may be heard, or on such subsequent date to which the public hearing or Council consideration may be continued.

APPROVED, AND ADOPTED after public hearing the 15th day of December, 2021.

CITY OF ALAMOSA

By _____
Ty Coleman, Mayor

ATTEST:

Holly C. Martinez, City Clerk

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