

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2019

COUNCIL BILL NO. CB19-0307
COMMITTEE OF REFERENCE:
4 Safety, Housing, Education & Homelessness

5 **A BILL**

6 **For an ordinance amending Article II of Chapter 37, Public Nuisance Offenses, by**
7 **updating certain ordinance and statute references, and amending Article III of**
8 **Chapter 37, Civil Abatement of Public Nuisances, by revising certain provisions**
9 **concerning the procedure to be followed in nuisance abatement proceedings.**

10 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

11 **Section 1.** Section 37-50 of the Denver Revised Municipal Code shall be amended by
12 adding the language underlined, and deleting the language stricken, to read as follows:

13 **Sec. 37-50. Definitions.**

14 (c) ~~Public nuisance, Class one (1):~~ Any parcel of real property, personal property, or motor vehicle
15 on or in which any of the following illegal activity occurs, or which is used to commit, conduct,
16 promote, facilitate, or aid the commission of or flight from any of the following activities. For
17 purposes of this section, the illegal activity shall have the same definition as that contained in
18 ~~the section of the Colorado Revised Statute (C.R.S.), as amended, or the section of the Denver~~
19 ~~Revised Municipal Code (D.R.M.C.), as amended, listed after the illegal activity:~~

20 1. Prostitution, 18-7-201, C.R.S.; soliciting for prostitution, 18-7-202, C.R.S.; pandering, 18-7-
21 203, C.R.S.; keeping a place of prostitution, 18-7-204, C.R.S.; or pimping, 18-7-206, C.R.S.;
22 Prostitution, D.R.M.C. 38-158.

23 2. Professional gambling, 18-10-102(8) and 18-10-103, C.R.S.; maintaining a gambling
24 premises, 18-10-102(5) and 18-10-107, C.R.S.; or keeping of a gambling device or record, 18-
25 10-102(3), 18-10-105, and 18-10-~~106~~102(7), C.R.S.;

26 3. Unlawful manufacture, cultivation, growth, production, processing, sale, distribution, storage,
27 use, transportation, or possession of any controlled substance, sections 18-18-102, 18-18-402,
28 18-18-403, 18-18-403.5, 18-18-404, 18-18-405, 18-18-406, 18-18-406.6, 18-18-406.9, 18-18-
29 411, 18-18-412.5, 18-18-412.7, 18-18-416, C.R.S.; any imitation controlled substance, sections
30 18-18-406.1, 18-18-406.2, 18-18-420(3) and 18-18-421, 18-18-422, C.R.S.; or any counterfeit
31 controlled substance, Section 18-18-423, C.R.S. except for simple possession of less than eight
32 (8) ounces of marijuana;

33 4. ~~Felony or misdemeanor theft by receiving, 18-4-410, C.R.S.;~~

1 54. Unlawful manufacture, sale, advertisement, or distribution of drug paraphernalia, sections
2 18-18-426, 18-18-427, 18-18-429, 18-18-430, C.R.S.;

3 65. Prostitution of a child, 18-7-401, C.R.S.; soliciting for child prostitution, 18-7-402, C.R.S.;

4 pandering of a child, 18-7-403, C.R.S.; keeping a place of child prostitution, 18-7-404, C.R.S.;

5 pimping of a child, 18-7-405, C.R.S.; or inducement of child prostitution, 18-7-405.5, C.R.S.;

6 76. Sexual exploitation of children, 18-6-403, C.R.S.;

7 87. Two (2) or more offenses of disturbing the peace, Denver Revised Municipal Code, section

8 38-89 within any one-hundred-eighty-day period;

9 98. Unlawful discharge, possession, carrying, flourishing, concealment, storage, use, or sale of

10 firearms, knives and/or assault weapons, dangerous weapons, or defaced firearms, Denver

11 Revised Municipal Code sections 38-117, 38-119, 38-121, 38-122, and 38-130, and C.R.S.

12 Sections 18-12-102, 18-12-103, 18-12-105, 18-12-105.5, 18-12-106, 18-12-108, 18-12-108.5,

13 or any offense relating to incendiary devices, section 38-126, Denver Revised Municipal Code

14 and C.R.S. section 18-12-109;

15 99. Any gang-related criminal activity;

16 104. Any drive-by crime, section 16-13-301, C.R.S.;

17 112. Three (3) or more offenses within any one-year period of selling, serving, giving away,

18 disposing of, exchanging, delivering, or permitting the sale, serving, giving or procuring of any

19 malt, vinous, or spirituous liquor, or fermented malt beverage, to or for any person under lawful

20 age or to a visibly intoxicated person, ~~as prohibited by C.R.S. section 44-3-901-12-47-901(1)(a)~~

21 ~~et seq., C.R.S.,~~ as amended. Each incident, to be counted as an offense within the meaning of

22 this section, must occur on separate dates and rely on discrete facts; or

23 123. The sale at retail of any malt, vinous, or spirituous liquors, or fermented malt beverages in

24 sealed containers, or the manufacture, sale, or possession for sale of any malt, vinous, or

25 spirituous liquors, without holding a valid license in full force and effect to do so under title ~~4412~~,

26 article ~~347~~, C.R.S., as prohibited by ~~section C.R.S. 44-3-901-12-47-901~~, C.R.S. (1)(f) and (g);

27 134. The unlawful transportation or storage of any property that is the subject of ~~a felony theft,~~

28 ~~or misdemeanor theft, or theft by receiving under title section~~ 18-4-401, C.R.S.;

29 145. The storage or concealment of weapons or tools used in the commission of crimes of

30 violence, C.R.S. section 16-11-309, drive-by offenses, C.R.S. section 16-13-301, or any offense

31 in paragraph 9. above;

32 156. Vehicular eluding, C.R.S. section 18-9-116.5, or eluding or attempting to elude a police

33 officer, C.R.S. section 42-4-1413 and D.R.M.C. section 54-56;

1 167. Speed contests or speed exhibitions, C.R.S. section 42-4-1105;
2 178. Habitual traffic offenders, C.R.S. sections 42-2-202, 42-2-206;
3 189. Sexual assaults or attempted sexual assaults, C.R.S. sections 18-2-101, 18-3-402, 18-3-
4 404, 18-3-405, 18-3-405.3, 18-3-405.5; or
5 1920. Indecent exposure, C.R.S. section 18-7-302 and D.R.M.C. section 38-157.1.
6 204. Keeping, maintaining, controlling, renting, or making available property for unlawful
7 distribution or manufacture of controlled substances, C.R.S. § 18-18-411; or the unlawful
8 possession of materials to make amphetamine and methamphetamine, C.R.S. § 18-18-412.5;
9 or, the unlawful sale or distribution of materials to manufacture controlled substances, C.R.S. §
10 18-18-412.7; or possession of one (1) or more chemicals or supplies or equipment with intent
11 to manufacture a controlled substance, C.R.S. § 18-18-405; the unlawful cultivation,
12 manufacturing, sale, offer for sale, or distribution of medical marijuana without a license, article
13 XII, chapter 24, D.R.M.C.; or the unlawful cultivation, manufacturing, sale, offer for sale, or
14 distribution of retail marijuana without a license, article V, chapter 6, D.R.M.C.; or
15 214.4. Keeping, maintaining, controlling, renting or making available property for the unlawful
16 operation of a medical marijuana dispensary without a license, article XI, chapter 24, D.R.M.C.;
17 or keeping, maintaining, controlling, renting or making available property for the unlawful
18 operation of a retail marijuana store without a license, article V, chapter, 6, D.R.M.C.; or

19 ~~(d) *Public nuisance, Class two*: any parcel of real property, personal property, or vehicle, on or in~~
20 ~~which any of the following illegal activities occur, or used to commit, conduct, promote, facilitate,~~
21 ~~or aid the commission of any of the following illegal activities. For purposes of this section, the~~
22 ~~illegal activity shall have the same definition as that contained in the pertinent section of the~~
23 ~~Colorado Revised Statutes, or the Denver Revised Municipal Code listed after the activity:~~
24 ~~1. Possession of injection devices, section 38-173, Denver Revised Municipal Code;~~
25 ~~2. Two (2) or more offenses within any one hundred eighty day period of prohibited noises,~~
26 ~~section 38-101, Denver Revised Municipal Code.~~

27 ~~(e) *Other definitions*. The definitions provided in section 37-71 shall also apply to this article II of~~
28 ~~chapter 37.~~

29 **Section 2.** Section 37-51 of the Denver Revised Municipal Code shall be amended by
30 deleting the language stricken, to read as follows:

31 **Sec. 37-51. - Public nuisances prohibited.**

32 It shall be unlawful for any owner, manager, tenant, lessee, occupant, or other person having
33 any legal or equitable interest or right of possession in any real property, vehicle, or personal

1 property, to intentionally, knowingly, recklessly, or negligently commit, conduct, promote, facilitate,
2 permit, fail to prevent, or otherwise let happen, any ~~Class One or Class Two~~ public nuisance in, on,
3 or using any property in which they hold any legal or equitable interest or right of possession. ~~Every~~
4 ~~day on which a violation exists shall constitute a separate violation and offense.~~

5 **Section 3.** Section 37-70 of the Denver Revised Municipal Code shall be amended by
6 adding the language underlined, and deleting the language stricken, to read as follows:

7 **Sec. 37-70. - Policy.**

8 (a) *Legislative intent.* The abatement of public nuisances for the protection of public
9 health, safety, and welfare is a matter of local concern. The most effective tools for abatement of
10 public nuisances are the civil remedial actions provided in this article, including temporary
11 restraining order, impoundment, ~~seizure~~, injunction, closure, receivership, and destruction. The
12 purpose of this article is not to punish, but to remedy public nuisances. The actions provided in this
13 article are designed to remedy public nuisances by removing real property, motor vehicles, and
14 personal property from criminal use and as a base of criminal operations, to ensure that criminal
15 activity and the use of property for criminal purposes is unprofitable, to require that the profits of
16 criminal activity be disgorged, to make property owners vigilant in preventing public nuisance
17 offenses on, in, or by the use of their property, and making property owners responsible for the
18 public nuisance use of their property by tenants, guests and occupants, and to deter public
19 nuisances.

20 The remedies provided in this article are directed at the property involved without regard to
21 ownership, title or right of possession and the culpability or innocence of those who hold these
22 rights. It is consistent with the remedial purpose of this article initially to provide for a less stringent
23 remedy to be applied to those who demonstrate that they are noninvolved owners, as it is more
24 likely that such persons will be law abiding in the future. The remedial actions provided in this article
25 are intended to be civil in nature. The remedies of ~~seizure~~, temporary restraining order,
26 impoundment, closure, receivership, and destruction are intended to be in rem, against the property
27 itself, and not against any individual directly. The remedies of temporary restraining order, civil
28 judgment, and injunction may be partially in personam.

29 (b) *Relief to certain owners.* Owners of real property, motor vehicles and personal property
30 used to commit, conduct, promote, facilitate, or aid the commission of or flight from and public
31 nuisance offense will be granted relief from the strict application of the mandatory closure and civil
32 judgment remedies provided in subsections 37-79(a)(1), 37-80(a)(1), and 37-82(a) ~~this article III,~~
33 ~~chapter 37,~~ under the following circumstances:

1 (c) *Good faith application of remedies.* In order to ensure that the remedies provided in this
2 article are applied in good faith and for the purpose of public nuisance abatement, the following shall
3 apply:

4 (1) No city employee's or law enforcement officer's employment or level of salary shall
5 depend upon the frequency or quantity of actions and remedies under this article that he or she
6 produces.

7 (2) All ~~seizures~~closures of real property shall be made pursuant to a temporary restraining
8 order based upon a judicial finding of probable cause and only after an opportunity for an adversarial
9 hearing to contest the closure ~~seizure~~ has been provided.

10 **Section 4.** Section 37-71 of the Denver Revised Municipal Code shall be amended by
11 adding the language underlined, and deleting the language stricken, to read as follows:

12 **Sec. 37-71. - Definitions.**

13 These terms and definitions shall apply to both articles II and III of this chapter:

14 (f) *Close, to close, or closure:* means to detain or secure ~~seize~~ the property and remove all
15 owners, tenants, occupants and other persons and animals from the real property, motor vehicle,
16 or personal property, or a specified discrete portion thereof, and to lock, board, bar and otherwise
17 close and prohibit all entry, access, and use of the real property, motor vehicle, or personal property,
18 or a specified discrete portion thereof, except such access and use as may be specifically ordered
19 by the court for purposes of inventory, maintenance, storage, security, environmental clean-up,
20 sanitation and other purposes, and to vest the sole right of possession and control of the real
21 property, motor vehicle, or personal property, or a specified discrete portion thereof, in the city and
22 county of Denver for a limited period of time defined by court order. In the case of a motor vehicle,
23 closure includes detention ~~seizure~~, and impoundment.

24 (i) *Impound or impoundment:* means to move a detained ~~seized~~ motor vehicle to the
25 sheriff's vehicle impound facility and to retain it temporarily in the legal custody of the city.

26 (l) *Non-involved owner:* means a person who ~~that~~ holds a legal interest in property that is
27 implicated in a public nuisance abatement action who took all steps that reasonably should have
28 been taken to prevent the proscribed use of the property, and who neither:

29 **Section 5.** Section 37-72 of the Denver Revised Municipal Code shall be amended by
30 adding the language underlined, and deleting the language stricken, to read as follows:

31 **Sec. 37-72. Procedure in general.**

32 (b) *No delay in proceedings.* ~~In the event that the city pursues both the criminal penalties~~
33 ~~in chapter 37, article II, the criminal remedies provided in any other section, other civil remedies, or~~

1 ~~the remedies of any administrative action, and the remedies in this article III of chapter 37, t~~The civil
2 action provided in this article III of chapter 37 shall not be delayed or held in abeyance pending the
3 outcome of any proceedings in a ~~the~~ criminal, civil, or administrative action, or any action filed by
4 any other person, unless all parties to the action under this article III of chapter 37 so stipulate.

5 (c) *Nature of nuisance abatement actions and limitation of defenses.* All actions under
6 this article III of chapter 37 shall be civil and remedial in nature. The civil action shall be in the nature
7 of a special statutory proceeding. All issues of fact and law shall be tried to the court without a jury.
8 No equitable defenses may be set up or maintained in any action under this section. All ~~seizure,~~
9 closure, receivership, and destruction remedies under this article III of chapter 37 shall be in rem.
10 Injunctive remedies under this section may be partly in personam. The burden of proof in all
11 proceedings under this article III of chapter 37, including proof of the underlying criminal activity
12 forming the basis of a public nuisance, shall be by ~~a preponderance of the evidence~~ clear and
13 convincing evidence, unless a different burden of proof is specified.

14 (j) *Parties to action.* The defendant(s) to the action provided in this article III of chapter
15 37 and the persons liable for the remedies in this section include the property itself, any person
16 owning or claiming any legal or equitable interest or right of possession in the property, all tenants
17 and occupants at the property, all managers and agents for any person claiming a legal or equitable
18 interest in the property, any person committing, conducting, promoting, facilitating or aiding the
19 commission of or flight from a public nuisance, and any other person whose involvement may be
20 necessary to abate the nuisance, prevent it from recurring, or to carry into effect the court's orders
21 for temporary restraining orders, ~~seizures,~~ closures, receiverships, injunctions, liens, and
22 destruction. None of these parties shall be deemed necessary or indispensable parties. Any person
23 holding any legal or equitable interest or right of possession in the property who has not been named
24 as a party-defendant may intervene as a party-defendant, excluding any straw man. No other parties
25 may intervene.

26 (n) *Service by posting or detention.* The summons, complaint and temporary restraining order
27 shall be served upon the real property itself by posting copies of the same in some prominent place
28 on the real property. Motor vehicles and other personal property shall be deemed served by
29 impoundment or detention of ~~seizure or by posting a copy of the summons and complaint in a~~
30 ~~prominent place upon~~ the motor vehicle or other personal property.

31 (p) *Notification before filing civil action.*

32 (1) At least ten (10) days before filing a civil action under this article involving any ~~seizure,~~
33 closure, or receivership of real property, the public nuisance abatement coordinator shall post a

1 notice at the main entrance to the buildings or at some other prominent place on the real property.
2 The public nuisance abatement coordinator shall also mail a notice to the owner of the real property
3 and to the holder of the last deed of trust recorded on the real property by first class mail. The
4 mailing of the notice shall be deemed sufficient if mailed to the owner and holder of the last recorded
5 deed of trust at the address shown on any ownership and encumbrance report, or recorded
6 documents attached thereto, issued by any title company doing business within the State of
7 Colorado. The posted and mailed notices shall state that the real property has been identified as a
8 public nuisance and that a civil action under this article may be filed.

9 **Section 6.** Section 37-73 of the Denver Revised Municipal Code shall be amended by
10 adding the language underlined, and deleting the language stricken, to read as follows:

11 **Sec. 37-73.** *Seizure-Detention of motor vehicles and personal property before filing*
12 *complaint.*

13 (a) *General ~~Seizure~~-detention of motor vehicles and personal property before filing a*
14 *complaint and motion for temporary restraining order is necessary to prevent the removal,*
15 *destruction and concealment of motor vehicles and personal property to thwart the remedies*
16 *provided in this article.*

17 (b) *Basis for ~~seizure~~-detention.* If the public nuisance abatement coordinator or any police
18 officer determines that there is probable cause to believe that:

- 19 (1) A ~~class one~~ public nuisance offense has occurred; and
20 (2) The ~~class one~~ public nuisance offense occurred in a motor vehicle, or a motor vehicle or
21 personal property was used to commit, conduct, promote, facilitate or aid the commission of or
22 flight from the ~~class one~~ public nuisance; and
23 (3) The motor vehicle or personal property is capable of being concealed, destroyed, or removed
24 from the city;

25 Then the public nuisance abatement coordinator or any police officer or sheriff's deputy may ~~seize~~
26 detain and impound the motor vehicle or personal property as a public nuisance.

27 (c) *Prompt declaration of status of ~~seized~~-detained property.* In any case that a motor vehicle or
28 personal property is ~~seized~~-detained as provided in subsection (b) above, the officer, sheriff's
29 deputy or public nuisance abatement coordinator shall promptly report the ~~seizure~~-detention to
30 the city attorney's office. Within forty-five (45) days of the date the motor vehicle or personal
31 property was ~~seized~~-detained as a public nuisance, the city attorney's office shall either declare
32 the motor vehicle and personal property available for release, declare the motor vehicle and
33 personal property to be contraband, declare the motor vehicle and personal property to be

1 relevant evidence in a criminal proceeding, or file an action under this article seeking judicial
2 remedies regarding the motor vehicle or personal property. The declarations provided above
3 shall be in writing and shall be made available as a public record at the office of the public
4 nuisance abatement coordinator.

- 5 (d) *Persons eligible to claim return of ~~seized~~detained property.* Any person, except a straw man,
6 claiming any legal or equitable interest or right of possession in any motor vehicle or personal
7 property ~~seized~~detained under this section 37-73 may file a motion in the civil action filed under
8 this article III of chapter 37 for return of the ~~seized~~detained property. The motion shall be filed,
9 set, served, heard and determined as provided in section 37-77(c) below.

10 **Section 7.** Section 37-74 of the Denver Revised Municipal Code shall be amended by
11 adding the language underlined, and deleting the language stricken, to read as follows:

12 **Sec. 37-74. - Temporary restraining orders in general.**

- 13 (a) *Policy.* ~~Class one and two p~~Public nuisances are a real, direct, and immediate threat to the
14 health, safety, and welfare of the people of Denver. ~~Class one and two p~~Public nuisances cause
15 immediate and irreparable injury, damages and losses to the citizens of Denver and their
16 governmental agencies. Actions at law are not an adequate remedy, and the protection of public
17 health, safety, and welfare requires the temporary restraining orders provided in this section.
18 Where probable cause as specified below is established, the balance of equities favors the
19 issuance of temporary restraining orders even where this may alter the status quo pending trial
20 to one that is lawful and free of public nuisances. Ex parte temporary restraining orders are
21 necessary to provide rapid relief from public nuisances without the delay entailed by an
22 adversarial hearings and personal service and to prevent persons from removing, concealing,
23 destroying, encumbering, selling, and transferring property that may be the subject of the
24 remedies in this article. The issuance and execution of temporary restraining orders under this
25 article III of chapter 37 shall not be deemed a bailment of property. The owner of the property
26 remains responsible for the maintenance, environmental clean-up, sanitation and security of
27 property subject to temporary restraining orders and shall be permitted reasonable access to
28 the property for these purposes upon application to the court.

- 29 (b) *Continuous effect of temporary restraining orders.* The ex parte temporary restraining orders
30 provided in this article III of chapter 37 shall remain continuously in effect unless modified by
31 court order as provided in section 37-77, by stipulation of the parties, or after a trial on the
32 merits.

1 (1) Where a motion to vacate or modify any portion of a temporary restraining order issued under
2 the authority of section 37-75(b), pertaining to the detention seizure of motor vehicles or
3 personal property, ~~or a motion for the return of seized property~~, is filed, set for hearing, and
4 personally served upon the office of ~~public nuisance abatement coordinator~~ the city attorney,
5 as required in section 37-77(~~b~~), those portions of the temporary restraining order shall continue
6 in effect until the completion of the hearing, including the continued retention of any previously
7 ~~seized~~ detained vehicle or item of personal property.

8 (2) Where a motion to vacate or modify any portion of a temporary restraining order issued under
9 the authority of section 37-75(c), pertaining to the pending physical closure seizure of real
10 property and the contents of buildings, is properly filed, set for hearing, and properly served
11 upon the office of the city attorney ~~public nuisance abatement coordinator~~, as required under
12 section 37-77(~~e~~), those portions of the temporary restraining order authorizing the physical
13 closure seizure shall be held in abeyance until the probable cause hearing is concluded.

14 **Section 8.** Section 37-75 of the Denver Revised Municipal Code shall be amended by
15 adding the language underlined, and deleting the language stricken, to read as follows:

16 **Sec. 37-75. Temporary restraining orders; ~~class one public nuisances.~~**

17 (a) *General.* The court shall issue an ex parte temporary restraining order if the complaint,
18 supported by an affidavit, shows that there is probable cause to believe that a ~~class one~~ public
19 nuisance offense has occurred on or in the real property or motor vehicle, or that the real
20 property, motor vehicle, or personal property was used to commit, conduct, promote, facilitate
21 or aid the commission of or flight from any ~~class one~~ public nuisance offense.

22 (b) *~~Seizure~~ Detention and closure of motor vehicle and personal property not within buildings and*
23 *restraining orders to persons concerning real property, motor vehicles, personal property and*
24 *public nuisances.* The temporary restraining order shall make the following orders for the
25 ~~seizure~~ detention and closure of motor vehicles and personal property not contained within
26 buildings and restraining persons as to real property, motor vehicles, and personal property;
27 ~~and public nuisances:~~

28 (1) The public nuisance abatement coordinator or any police officer or sheriff's deputy shall be
29 ordered to ~~seize~~ detain and close motor vehicles and items of personal property not contained
30 within any structure on real property, using any reasonable force necessary, and to place the
31 same in police custody, or to retain the same in police custody if previously detained ~~seized~~, in
32 the constructive custody of the court, until further order of the court.

1 (2) All named defendants shall be ordered to deposit with the public nuisance abatement
2 coordinator or any police officer or sheriff's deputy ~~seizing~~ detaining the motor vehicle or
3 personal property, all documents evidencing ownership, title, registration, keys, combination
4 numbers, magnetic cards and other devices for either access and/or operation of the motor
5 vehicles or items of personal property.

6 (3) The public nuisance abatement coordinator or any police officer or sheriff's deputy shall be
7 ordered to post the summons, complaint, and temporary restraining order on the real property,
8 ~~motor vehicle or personal property~~ and to serve copies upon any person who reasonably
9 appears or claims to hold a legal or equitable interest or right of possession in the real property,
10 motor vehicle or personal property.

11 (4) ~~Restrain a~~ All persons shall be restrained from removing, concealing, damaging, destroying,
12 or selling, giving away, encumbering or transferring any interest in personal property, motor
13 vehicles, fixtures, structures, or real property, or the contents of the same, or using as security
14 for a bond, any of the property.

15 (5) Persons holding any legal or equitable interest or right of possession in the real property,
16 motor vehicle, or personal property shall be ordered to take all reasonable steps to abate the
17 public nuisance.

18 (6) ~~That~~ the public nuisance abatement coordinator or any police officer or sheriff's deputy may
19 be authorized to take additional reasonable steps authorized by the court to abate the public
20 nuisance activity and prevent it from recurring.

21 (7) ~~Requiring e~~ Certain named individuals may be required to stay at least two hundred (200)
22 yards away from the property at all times.

23 (8) Any other orders that may be reasonably necessary to take the property into the court's
24 constructive custody, and to provide access to and safeguard the property.

25 (c) ~~Seizure-Closure of real property and the contents of buildings.~~ With respect to the closure of
26 real property and the contents of buildings, ~~In addition to the orders in section 37-75(b), the~~
27 temporary restraining order shall make the following additional orders as provided in paragraph
28 (6) of this subsection (c) ~~with respect to the seizure of real property and the contents of buildings,~~
29 which orders shall become effective ten (10) days after the date the temporary restraining order
30 is posted on the real property and served upon any person found in possession thereof at the
31 time of posting the temporary restraining order is posted at the real property, unless within that
32 ten-day period, a person claiming a bona fide legal or equitable interest or right of possession
33 in the real property files, sets, serves, and has heard a motion for return of the real property as

1 provided in section 37-77(c). ~~The motion shall be heard and determined as provided in section~~
2 ~~37-77(c).~~

3 (1) No temporary restraining order shall permit the seizure closure of real property until this ten-
4 day period has elapsed.

5 (2) In the event that the motion is properly filed, set for hearing, served, and heard as provided
6 in section 37-77(e), the portions of the temporary restraining order pertaining to the seizure
7 closure of the real property shall be held in abeyance until the hearing on the motion is
8 concluded.

9 (3) In the event that the motion is not properly filed, set for hearing, served, and heard as
10 provided in section 37-77(e), the orders shall become effective after the ten-day period has
11 elapsed, and shall not be modified except upon trial on the merits, or stipulation of the parties,
12 or as provided in paragraph (4) of this subsection (c).

13 (4) Upon a showing of good cause at the hearing, the court may reasonably modify or delay the
14 execution of the temporary restraining order, except that such reasonable modification or delay
15 shall not jeopardize public health, safety, and welfare.

16 a. In order to show "good cause" for purposes of this paragraph (4), the moving party must
17 establish by a preponderance of the evidence that:

18 1. The defendant did not participate in the illegal activity, and

19 2. The immediate execution of the temporary restraining order will cause extreme hardship
20 to persons holding a legal or equitable interest or right of possession in the real property.

21 b. The court must make written findings of fact and conclusions of law that the moving party
22 has established at the hearing, by a preponderance of the evidence, that good cause exists to
23 support any decision to modify or delay the execution of the temporary restraining order, and
24 that the modification or delay does not jeopardize public health, safety, and welfare.

25 (5) The public nuisance abatement coordinator may execute shall cause the immediate
26 execution of the effective temporary restraining order after the ten-day period has elapsed.
27 following the tenth day after the date the temporary restraining order is posted on the real
28 property and served upon any person found in possession thereof at the time the temporary
29 restraining order is posted at the real property, including the seizure of the listed property, when
30 he or she has not been properly served both a motion and a notice of a scheduled hearing, as
31 provided in section 37-77(c).

32 (6) The orders that shall be entered with respect to the closure seizure of real property and the
33 contents of buildings are:

1 (1) ~~a.~~ The public nuisance abatement coordinator and any police officer ~~shall be ordered to~~ may
2 enter upon, ~~seize,~~ and close the real property, and buildings, and structures upon the real
3 property and the contents of the same, using any reasonable force necessary.

4 (2) ~~b.~~ In the event that the property is closed, All persons holding any legal or equitable interest
5 or right of possession, in the real property, and motor vehicles or personal property contained
6 thereon, shall be ordered to deposit with the public nuisance abatement coordinator or any
7 police officer, or sheriff's deputy closing ~~seizing~~ the real property, all documents evidencing
8 ownership, financial interest, title, registration, keys, combination numbers, magnetic cards and
9 other devices and information for access to the real property, any buildings, or structures, and
10 any keys for access to and/or operation of any motor vehicles and personal property contained
11 thereon until further order of the court.

12 (3) ~~c.~~ Persons holding any legal or equitable interest or right of possession in the real property
13 shall be ordered to provide for the maintenance, utilities, insurance, environmental clean-up,
14 sanitation and security of the property. The court shall permit these persons reasonable access
15 to perform these duties. The court may order that the public nuisance abatement coordinator is
16 permitted to perform these duties in lieu of the owners, but shall not order the public nuisance
17 abatement coordinator to do so.

18 (4) ~~d.~~ Where the real property involved contains four (4) or more apartments or other
19 individualized rental units, and the city so requests, the court ~~shall~~ may order, in lieu of closure,
20 but in addition to the other orders provided above, that certain named individuals who
21 committed, conducted, promoted, facilitated or aided the commission of a public nuisance be
22 removed from the property, but that other persons lawfully on the premises be permitted to
23 remain, and the property be placed in a special receivership as provided in this subsection. A
24 receiver appointed ex parte by the court shall take possession of the property to the exclusion
25 of the owners and other persons holding any legal or equitable interest and their managers and
26 agents then in possession, collect rents and profits from the tenants, and pay the operating
27 expenses, taxes, utilities and maintenance expenses on the property including the cost of
28 abating public nuisances and preventing the same from recurring. The receiver shall not pay
29 the principal or interest on any note, deed of trust, mortgage, installment land contract or similar
30 instrument, and these obligations shall remain that of the owners and other persons holding any
31 legal or equitable interest in the real property. The court shall periodically award the receiver
32 reasonable fees for his or her services to be paid out of the rents, profits, and income. The
33 receiver shall account for all income and expenses. The court shall order the defendants to pay

1 the fees and expenses of the receiver, utilities, maintenance, environmental clean-up,
2 sanitation, security, operating expenses, taxes, insurance and other reasonable expenses
3 related to the property to the extent that the rents, income, and profits of the property are
4 insufficient to defray the same. The receiver appointed ex parte shall not be replaced except
5 upon the stipulation of all parties. The court may make other reasonable orders consistent with
6 these provisions for the administration of this special receivership.

7 ~~(5) e.~~ The court may make other orders reasonably necessary to gain access to, maintain, and
8 safeguard the property.

9 **Section 9.** Section 37-76 of the Denver Revised Municipal Code shall be amended by
10 adding the language underlined, and deleting the language stricken, to read as follows:

11 **Sec. 37-76. – Reserved. ~~Temporary restraining orders; class two public nuisances.~~**

12 ~~(a) *Issuance of temporary restraining order.* The court shall issue an ex parte temporary restraining~~
13 ~~order if the complaint, supported by an affidavit, shows that there is probable cause to believe~~
14 ~~that a class two public nuisance has occurred on or in the real property or motor vehicle, or the~~
15 ~~real property, motor vehicle, or personal property has been used to commit, conduct, promote,~~
16 ~~facilitate, or aid the commission of or flight from a class two public nuisance. The temporary~~
17 ~~restraining order shall order that:~~

18 ~~(1) The public nuisance abatement coordinator or any police officer or sheriff's deputy may seize~~
19 ~~and close motor vehicles, personal property, and animals not contained within any structures~~
20 ~~upon real property, which have been used to commit, conduct, promote, facilitate, or aid the~~
21 ~~commission of or flight from the class two public nuisance. The temporary restraining order shall~~
22 ~~permit the entry of real property to conduct these seizures and closures, but shall not permit the~~
23 ~~entry of any enclosed buildings upon real property or the seizure or closure of the real property~~
24 ~~itself.~~

25 ~~(2) The public nuisance abatement coordinator or any police officer or sheriff's deputy may take~~
26 ~~steps to abate the class two public nuisance and prevent it from recurring as long as the same~~
27 ~~may be accomplished without entering any enclosed buildings upon the real property.~~

28 ~~(3) Persons holding any legal or equitable interest or right of possession in the real property,~~
29 ~~motor vehicle, or personal property shall be ordered to take all reasonable steps to abate the~~
30 ~~class two public nuisance and prevent any class two public nuisance offense from occurring on~~
31 ~~the property.~~

1 ~~(4) The public nuisance abatement coordinator or any police officer or sheriff's deputy shall~~
2 ~~serve the summons, complaint and restraining order on the defendant(s) and post a copy of the~~
3 ~~same on the real property, motor vehicle, or personal property.~~

4 ~~(5) The temporary restraining order may also include any other orders that may be reasonably~~
5 ~~necessary for the purposes of access to the personal property or motor vehicles, abating the~~
6 ~~class two public nuisance, seizing or safeguarding personal property and animals, or to prevent~~
7 ~~the class two public nuisance from recurring, but no order shall permit the entry of any enclosed~~
8 ~~buildings upon the real property or the seizure and closure of the real property itself.~~

9 **Section 10.** Section 37-77 of the Denver Revised Municipal Code shall be amended by
10 adding the language underlined, and deleting the language stricken, to read as follows:

11 **Sec. 37-77. – Motion to vacate or modify temporary restraining order or for return of**
12 **seized closed or detained property.**

13 (a) *General.* Any party-defendant and any person holding any legal or equitable interest or right of
14 possession in any property closed ~~seized~~ or restrained under this article, except a straw man,
15 may file a motion to vacate or modify the temporary restraining order. ~~or for return of seized~~
16 ~~property.~~ Proceedings on these motions shall be as provided below.

17 (b) *Motion to vacate or modify.* ~~orders other than those pertaining to seizure of property.~~ Where
18 ~~the specific provision in the temporary restraining order complained of pertains to any matter~~
19 ~~other than the seizure, retention, closure, or receivership of property, the provisions of this~~
20 ~~subsection 37-77(b) shall apply and control.~~

21 ~~(4)~~ Within ten (10) days of the date the defendant is served with the temporary restraining order, the
22 moving party must: (a) file this motion; and (b) set the motion for a hearing to be held as soon
23 as practicable ~~on a date not more than twenty (20) days after the service of the temporary~~
24 ~~restraining order upon him or her;~~ and (c) personally serve, and not by mail, the motion and
25 notice of the hearing on the city attorney's office of the public nuisance abatement coordinator.
26 ~~The moving party must then have the motion heard and determined within twenty days of the~~
27 ~~date the temporary restraining order was served upon him or her.~~ Failure to file, set for hearing,
28 serve the motion and notice of hearing, and have the motion heard and determined as provided
29 above shall constitute a waiver of the motion and, except as provided in paragraph (5) of this
30 subsection (b), the temporary restraining order shall remain in effect and shall not be modified
31 until after a trial on the merits or upon the stipulation of the parties.

32 (1-2) At the hearing, the city shall have the burden of proving that there is probable cause to
33 believe that a ~~class one or class two~~ public nuisance offense, as listed in section 37-50(e) ~~or~~

1 ~~(d)~~, occurred on or in the real property or motor vehicle, or probable cause to believe that the
2 real property, motor vehicle, or personal property was used to commit, conduct, promote,
3 facilitate or aid the commission of or flight from any ~~class one or class two~~ public nuisance. The
4 court shall not vacate or modify the temporary restraining order unless it finds that there is no
5 probable cause to believe that a ~~class one or two~~ public nuisance occurred.

6 (23) Any motion to modify or vacate a temporary restraining order shall state specifically the
7 factual and legal grounds upon which it is based, and only those grounds may be considered at
8 the hearing.

9 (34) The court shall not grant an adjournment or continuance of the hearing on the motion to
10 modify or vacate the temporary restraining order unless the parties so stipulate. The judicial
11 determination required pursuant to this section ~~that a motion filed by a named defendant or~~
12 ~~other party seeking to intervene has met the requirements under section 37-77(b) and the~~
13 ~~judicial determination of probable cause shall take priority in any initial hearing and these judicial~~
14 ~~determinations shall not be delayed without a finding of fact and conclusion of law by the court~~
15 ~~as to the necessity for the delay and the declaration of the expedited schedule for the~~
16 ~~determination.~~

17 (45) In determining whether there is probable cause, the court shall temper the rules of evidence
18 and admit hearsay evidence unless the court finds that it such hearsay evidence is not
19 reasonably reliable and trustworthy. In determining whether there is probable cause, the court
20 shall also consider the affidavit submitted in support of the complaint or motion for temporary
21 restraining order, and those facts need not be repeated at the hearing. In determining whether
22 there is probable cause, the court shall not consider whether any affirmative defenses may
23 exist.

24 (5) Except as otherwise provided in section 37-75(c)(4), the court shall not vacate or modify the
25 temporary restraining order unless it finds that there is no probable cause to believe that a public
26 nuisance occurred.

27 ~~(c) Motion to modify or vacate order for seizure of property or motion for return of seized property.~~
28 ~~Where the specific provision in the temporary restraining order complained of pertains to the~~
29 ~~seizure, pending seizure, retention, closure, or receivership of property, the provisions of this~~
30 ~~subsection 37-77(c) shall apply and control.~~

31 ~~(1) Within ten (10) days of the date the defendant is served with the temporary restraining order,~~
32 ~~the moving party must: (a) file this motion; and (b) set the motion for a hearing to be held on a~~
33 ~~date not more than twenty (20) days after the service of the temporary restraining order upon~~

1 him or her; and (c) personally serve, and not by mail, the motion and notice of the hearing on
2 the office of the public nuisance abatement coordinator. The moving party must then have the
3 motion heard and determined within twenty (20) days of the date the temporary restraining order
4 was served upon him or her, unless the moving party is not a named defendant, but an
5 intervener, in which case the twenty (20) day period starts only upon the posting of the
6 temporary restraining order upon the property.

7 (2) At the hearing on motion to modify or vacate the temporary restraining order or for return
8 and release of seized property, the party seeking the modification or vacating of the temporary
9 restraining order or release and return of the property shall have the initial burden of proving
10 standing before the court by proving that he or she is the owner or is presently entitled to
11 possession, that the property is not contraband, and that the property is not relevant evidence
12 in any criminal proceeding known to the city.

13 (3) At the hearing, the city shall have the burden of proving that there is probable cause to
14 believe that a class one or class two public nuisance offense, listed in section 37-50(c) or (d),
15 occurred in or on the real property or motor vehicle, or probable cause to believe that the real
16 property, motor vehicle, or personal property was used to commit, conduct, promote, facilitate
17 or aid the commission of or flight from a class one or class two public nuisance offense, listed
18 in section 37-50(c) or (d). The party seeking release and return of the seized property, or
19 seeking to modify or vacate the provisions of the temporary restraining order authorizing the
20 pending seizure of property, shall have the burden of proving that (a) the party holds a bona
21 fide legal or equitable interest or present right of possession in the property and is not a straw
22 man; (b) the property is not contraband; and, (c) the property is not relevant evidence in any
23 criminal proceeding known to the city.

24 (4) The court shall not return or release the property to the party seeking the same, or modify
25 or vacate the provisions of the temporary restraining order authorizing the pending seizure of
26 property, unless it finds by a preponderance of the evidence that: (a) the moving party holds a
27 bona fide legal or equitable interest or present right of possession in the property and is not a
28 straw man; (b) the property is not contraband; and, (c) there is no probable cause to believe
29 that a class one or two public nuisance offense, listed in section 37-50(c) or (d) was committed
30 in or on the real property or motor vehicle, and no probable cause to believe that the real
31 property, motor vehicle or personal property was used to commit, conduct, promote, facilitate,
32 or aid the commission of or flight from a class one or class two public nuisance offense, listed
33 in section 37-50(c) or (d).

1 ~~(5) Any motion to modify or vacate the provisions of the temporary restraining order authorizing~~
2 ~~the pending seizure of property or a motion for return of seized property shall state specifically~~
3 ~~the factual and legal grounds upon which it is based, and only those grounds may be considered~~
4 ~~at the hearing.~~

5 ~~(6) The court shall not grant an adjournment or continuance of the hearing on the motion to~~
6 ~~modify or vacate a temporary restraining order or the motion for return of seized property unless~~
7 ~~the parties so stipulate.~~

8 ~~(7) The judicial determination that any motion filed by a named defendant or other party seeking~~
9 ~~to intervene has met the requirements under section 37-77(c) and the judicial determination of~~
10 ~~probable cause shall take priority in any initial hearing and these judicial determinations shall~~
11 ~~not be delayed without a finding by the court that the delay is necessary and the issuance of an~~
12 ~~expedited schedule for determination. Upon the court's determination that a motion to vacate or~~
13 ~~modify a temporary restraining order was not properly filed, set, served, and heard as required~~
14 ~~under section 37-77(c), or that probable cause exists to believe that the property constitutes a~~
15 ~~public nuisance, as defined in section 37-50(c), the court shall order the immediate seizure or~~
16 ~~continued retention and closure of the property and its contents pending final adjudication of~~
17 ~~the city's complaint, unless the city attorney agrees to the delay or other result.~~

18 ~~(8) In determining whether there is probable cause, the court shall temper the rules of evidence~~
19 ~~and admit hearsay evidence unless the court finds that it is not reasonably reliable and~~
20 ~~trustworthy. In determining whether there is probable cause, the court shall also consider the~~
21 ~~affidavit submitted in support of the complaint or motion for temporary restraining order, and~~
22 ~~those facts need not be repeated at the hearing. In determining whether there is probable cause,~~
23 ~~the court shall not consider whether any affirmative defenses may exist.~~

24 ~~(dc) Consolidation of hearing on motion to vacate, modify, or for return of property with trial on merits.~~

25 Where all parties so stipulate, the court may order the trial on the merits to be advanced and
26 tried with the hearing on these motions. Even where the trial on the merits is not so advanced,
27 any evidence received at the hearing on these motions need not be repeated at trial, but shall
28 be treated as a part of the record for trial.

29 **Section 11.** Section 37-78 of the Denver Revised Municipal Code shall be amended by
30 adding the language underlined, and deleting the language stricken, to read as follows:

31 **Sec. 37-78. - Remedies for class one public nuisances.**

32 (a) *General.* Where the existence of a ~~class one~~ public nuisance is established in a civil action
33 under this article III of chapter 37, the court shall enter prohibitory and mandatory injunctions

1 requiring all defendants to abate the public nuisance and take specific steps to prevent the same
2 and all other ~~class one~~ public nuisance offenses, as listed in section 37-50(c), from occurring
3 on the real property or in the motor vehicle, or to prevent any person from using the real
4 property, motor vehicle, or personal property to commit, conduct, promote, facilitate or aid the
5 commission of or flight from the ~~class one~~ public nuisance.

6 (b) *Supplementary remedies.* In any action where probable cause for the existence of a ~~class one~~
7 public nuisance is established, in the event that the defendants, or any one of them, fails,
8 neglects or refuses to comply with the court's temporary restraining orders, receiverships,
9 closures, and other orders, the court shall, upon the motion of the city, in addition to the remedy
10 of contempt, enter such orders as necessary to permit the city to enter upon the real property,
11 gain access to the motor vehicle or the subject personal property, and take such actions as are
12 necessary to abate the public nuisance or create such additional orders as necessary to secure
13 the property against continued public nuisance offenses during the pendency of the civil action,
14 including, but not limited to, orders of ~~seizure~~ detention, closure, and receivership. The city shall
15 be entitled to reimbursement for all costs necessitated by the defendant(s) failure to comply with
16 the court's orders.

17 (c) The public nuisance abatement coordinator, based upon probable cause to believe that a ~~class~~
18 ~~one~~ public nuisance offense has occurred, may issue a cease and desist order to the owner(s)
19 of specified real property, ordering such persons to implement an incorporated abatement plan
20 within a specified reasonable period of time. Failure to comply with the cease and desist order
21 will subject the real property to the filing of a remedial civil in rem public nuisance abatement
22 action for judicial remedies available under article III, chapter 37, D.R.M.C.

23 **Section 12.** Section 37-79 of the Denver Revised Municipal Code shall be amended by
24 adding the language underlined, and deleting the language stricken, to read as follows:

25 **Sec. 37-79. - Remedies for real property.**

26 (a) *Additional remedies.* In addition to the general and supplementary remedies listed in
27 section 37-78, the court shall also order, with respect to any real property on or in which any ~~class~~
28 ~~one~~ public nuisance offense, as listed in section 37-50(~~e~~) occurred, or any real property, used to
29 commit, conduct, promote, facilitate or aid the commission of or flight from any ~~class one~~ public
30 nuisance offense, as listed in section 37-50(~~e~~), as follows:

31 (1) *Mandatory closure of real property.* The court shall order that the real property be closed
32 for a period not less than one (1) year and not exceeding three (3) years from the date of the final
33 judgment, plus any extension of that period caused by a failure to comply with the conditions for

1 release of the property set out below, unless the defendant shows that he is a non-involved owner,
2 as defined in subsection 37-71(k), above, and not in violation of a term or condition of a current
3 abatement plan previously imposed on the subject property. The court shall order the defendants
4 to provide for the maintenance, environmental clean-up, sanitation, utilities, insurance, and security
5 of the property during the period of closure.

6 a. At the end of the closure period, the real property shall be released to the owner only upon:

7 ~~(a)~~ 1. Payment of all expenses incurred by the city for ~~seizure,~~ closure, utilities,
8 environmental clean-up, sanitation, security, access, destruction of buildings, maintenance,
9 insurance, and other reasonable expenses; and

10 ~~(b)~~ 2. Payment of all civil judgments under section 37-82; and

11 ~~(c)~~ 3. Execution by all owners and other persons holding any legal or equitable interest or
12 right of possession in the real property of a complete and unconditional release of the city and all of
13 its employees and agents for any liability for the ~~seizure,~~ closure and damages to the property.

14 (c) *Receivership of real property.* The court may order, where the city so requests, in lieu
15 of closure of real property, that the real property be placed into a special receivership on the terms
16 set out in section 37-75(c)(4) for a period not less than one (1) year and not more than three (3)
17 years from the date of the final judgment plus any extension of that period caused by a failure to
18 comply with the conditions for release of the property set out below. The court shall order the
19 defendants to provide for and pay the maintenance, utilities, environmental clean-up, sanitation,
20 security, operating expenses, taxes, insurance, receivership fees, and other reasonable expense
21 related to the property to the extent that the rents, profits, and income of the property under the
22 receivership are insufficient to defray these expenses. At the end of the receivership period, the real
23 property shall be released to the owner only upon (a) payment of all expenses incurred by the city
24 for ~~seizure,~~ closure, utilities, environmental clean-up, sanitation, security, access, maintenance,
25 insurance, taxes, receivership and receivership fees, and other reasonable expenses, not covered
26 by the income under receivership; (b) payment of all civil judgments under section 37-80; and (c)
27 execution by all owners and other persons holding any legal or equitable interest or right of
28 possession in the real property of a complete and unconditional release of the city and all of its
29 employees and agents, including the receiver, for any liability for the ~~seizure,~~ closure and
30 receivership and damages to the property. In the event that the owners or other persons holding
31 any legal or equitable interest or right of possession in the real property, or any of them, fail, neglect
32 or refuse to pay the fees, expenses, and judgments, or to execute the release provided above, the
33 property shall remain under the receivership or be closed as provided in subsection (a)(1) above.

1 The issuance and execution of the receivership order shall not be deemed a bailment of property.
2 The owner of the property remains responsible for the maintenance, environmental clean-up,
3 sanitation, and security of property subject to the receivership order and shall be permitted
4 reasonable access to the property for these purposes upon application to the court. In the event
5 that the income, rents and profits of the receivership, after a complete accounting, exceed the costs
6 and expenses of access, ~~seizure, closure,~~ maintenance, security, taxes, insurance, environmental
7 clean-up, sanitation, destruction of buildings, the receivership and receivership fees, and all other
8 reasonable expenses related to the property, the court shall order the receiver to expend the
9 remainder first to pay the civil judgments due in the case, and second on specific improvements at
10 the property that will abate public nuisances or prevent them from recurring.

11 **Section 13.** Section 37-80 of the Denver Revised Municipal Code shall be amended by
12 adding the language underlined, and deleting the language stricken, to read as follows:

13 **Sec. 37-80 - Remedies for motor vehicles and personal property.**

14 (a) *Additional remedies.* In addition to the general and supplementary remedies listed in
15 section 37-78, the court shall also order, that any motor vehicle or item of personal property
16 adjudicated a ~~class one~~ public nuisance, one or more of the following remedies:

17 (2) Except as provided in paragraph (3) of this subsection 37-80, ~~A~~ at the end of the
18 closure period, the motor vehicle shall be released to the owners only upon:

19 ~~(a) a. p~~ Payment of all towing fees, storage fees, and civil judgments under section 37-82
20 within ~~thirty (30)~~ sixty (60) days of receiving notice of the final judgment of the court; and

21 ~~(b) b. e~~ Execution by the owners and lienors of a complete and unconditional release of the
22 city and all of its employees and agents for the closure and any and all damages to said vehicle.

23 (3) Impoundment and storage fees may be appealed to the manager of safety who is
24 authorized, pursuant to section 54-813, to waive or adjust any charges whenever in the manager's
25 judgment it would be inequitable or result in result in an injustice to collect or require payment of
26 such charges.

27 (4) Upon a showing of good cause and notwithstanding the provisions of D.R.M.C. section
28 54-813, the court may reduce the storage fees owed pursuant to paragraph (2) of this subsection,
29 but in no event shall the storage fees be reduced to an amount lower than the fair market value of
30 the vehicle.

31 a. For purposes of this paragraph (3), "good cause" may be established by a preponderance
32 of the evidence that the storage fees exceed the fair market value of the vehicle.

1 b. The court must make written findings of fact and conclusions of law that the moving party
2 has established, by a preponderance of the evidence, that good cause exists to support any decision
3 to reduce the amount of storage fees owed.

4 (43) In the event that the owners and lienors, or any of them, fail, neglect or refuse to pay
5 the fees, expenses, and judgments, within ~~thirty (30)~~ sixty (60) days of receiving notice of the final
6 judgment of the court, the motor vehicle shall be declared to be abandoned and shall be disposed
7 of in compliance with this code.

8 (54) The issuance and execution of the closure order shall not be deemed a bailment of
9 property. The owner of property remains responsible for the maintenance and security of property
10 subject to the closure order and shall be permitted reasonable access to the property for these
11 purposes upon application to the court.

12 (b) *Injunctive orders for motor vehicles or personal property.* Where the public nuisance
13 abatement coordinator has previously issued an abatement plan to the owners of a motor vehicle
14 or an item of personal property, the court shall order the abatement plan be fully implemented and
15 maintained upon final judgment. Except as provided in paragraphs (2) and (3) of subsection (a) of
16 this section, Upon payment of towing fees, storage fees, and civil judgments under section 37-82,
17 the public nuisance motor vehicle may be released under the provisions of the court's order.

18 (d) *Quick release to non-involved owner(s).* A non-involved owner has the option to obtain
19 the immediate release of a ~~seized~~ detained vehicle upon execution of an agreement for immediate
20 release ("agreement") with the city, conditioned upon the following requirements:

21 (1) The non-involved owner agrees that their vehicle was involved in a ~~class one~~ public
22 nuisance incident.

23 (3) The non-involved owner agrees that the vehicle will not be involved in a ~~class one~~
24 public nuisance incident for a period of two (2) years following the execution of the agreement.

25 (4) Except as provided in paragraphs (2) and (3) of subsection (a) of this section,
26 Accrued towing and storage charges will be paid in full at the time the vehicle is released from the
27 Denver Vehicle Impound Facility.

28 (7) Violation of any term of the agreement will require the owner to immediately surrender
29 the vehicle to the Denver Vehicle Impound Facility where it will be closed as provided in article III,
30 chapter 37, D.R.M.C. If the vehicle is not surrendered, owner authorizes the city to retake
31 possession of the vehicle by any reasonable means, including entry upon real property. Within thirty
32 (30) days of such enforcement action ~~seizure~~, the city shall file a complaint for abatement of public
33 nuisance, seeking closure of the subject vehicle as a public nuisance.

1 (8) The public nuisance abatement coordinator may cause the vehicle to be listed on
2 Denver Police Department informational systems showing the person(s) who is/are restricted from
3 access to said vehicle.

4 **Section 14.** Section 37-81 of the Denver Revised Municipal Code shall be amended by
5 deleting the language stricken, to read as follows:

6 **Sec. 37-81. – Reserved. Remedies for class two public nuisances.**

7 ~~(a) *General.* Where the existence of a class two public nuisance is established, the court shall enter~~
8 ~~mandatory and prohibitory injunctions requiring the defendant(s) to abate the public nuisance~~
9 ~~and take specific steps to prevent the same and any other public nuisance from occurring on~~
10 ~~the real property, in the motor vehicle, or using the personal property. The court may also order~~
11 ~~the destruction of any personal property used to commit, conduct, promote, facilitate, or aid in~~
12 ~~the commission of the class two public nuisance.~~

13 ~~(b) *Cease and desist orders.* The public nuisance abatement coordinator, based upon probable~~
14 ~~cause to believe that a class two public nuisance offense has occurred, may issue a cease and~~
15 ~~desist order to the owner(s) of the specified property, ordering such persons to implement an~~
16 ~~incorporated abatement plan within a specified reasonable period of time. Failure to comply with~~
17 ~~the cease and desist order will subject the real property to the filing of a remedial civil in rem~~
18 ~~public nuisance abatement action for judicial remedies available under article III, chapter 37,~~
19 ~~D.R.M.C.~~

20 ~~(c) *Supplementary remedies.* In any action in which probable cause for the existence of a class two~~
21 ~~public nuisance is established, in the event that the defendant(s) fails, neglects or refuses to~~
22 ~~comply with the court's temporary restraining orders, receiverships, closures, and other orders,~~
23 ~~the court shall, upon the motion of the city, in addition to or in the alternative to the remedy of~~
24 ~~contempt, enter such orders as necessary to permit the city to enter upon the real property, gain~~
25 ~~access to the motor vehicle or the subject personal property and take such actions as are~~
26 ~~necessary to abate the public nuisance or create such additional orders as necessary to secure~~
27 ~~the property against continued public nuisance offenses during the pendency of the civil action,~~
28 ~~including, but not limited to, orders of seizure, closure, and receivership. The city shall be~~
29 ~~entitled to reimbursement for all costs necessitated by the defendant(s) failure to comply with~~
30 ~~the court's orders.~~

31 **Section 15.** Section 37-82 of the Denver Revised Municipal Code shall be amended by
32 adding the language underlined, and deleting the language stricken, to read as follows:

33 **Sec. 37-82. - Civil judgment and liens.**

1 (a) *Judgment for costs.* Except as provided in subsection (c) of this section, in any case in which a
2 ~~class one or class two~~ public nuisance is established by clear and convincing evidence, in
3 addition to the remedies provided above, the court shall impose a separate civil judgment on
4 every person who committed, conducted, promoted, facilitated, or aided the commission of any
5 public nuisance or who held any legal or equitable interest or right of possession in any real
6 property or motor vehicle on or in which any public nuisance occurred, or any real property,
7 motor vehicle, or personal property used to commit, conduct, promote, facilitate or aid the
8 commission of any public nuisance. This civil judgment shall be for the purpose of compensating
9 the city for the costs of pursuing the remedies under this article.

10 (b) The civil judgment shall be in the liquidated sum of two thousand dollars (\$2,000.00) and shall
11 be imposed as a judgment against each defendant independently, separately and severally

12 (c) In the event that the owners and lienors of a subject motor vehicle, or any of them, fail to file
13 timely responsive pleadings and set the matter for hearing or trial on the merits, the court shall
14 enter a default judgment and an order deeming the vehicle abandoned. In the event a default
15 judgment and order of abandonment are entered, the civil judgment provided in subsection (b)
16 of this section shall not be imposed and the vehicle shall be disposed of pursuant to the
17 provisions of section 54-816(b).

18 (d) *Liens for civil judgments.* In addition to the remedies provided in this article III of chapter 37, the
19 city shall have a lien against the real property, and motor vehicle, when applicable, on or in
20 which any public nuisance occurred or which was used to commit, conduct, promote, facilitate,
21 or aid in the commission of any public nuisance for the total of all civil judgments imposed under
22 this section. The city may record a statement of lien affecting real property with the clerk and
23 recorder. The city may record a lien with the Denver Vehicle Impound Facility for a motor vehicle
24 that has been closed and impounded following a public nuisance abatement action. Such
25 vehicle may not be released to the owner until a release of lien is secured from the office of the
26 city attorney.

27 **Section 16.** Section 37-83 of the Denver Revised Municipal Code shall be amended by
28 adding the language underlined, and deleting the language stricken, to read as follows:

29 **Sec. 37-83. - Stipulated alternative remedies.**

30 (a) *Voluntary stipulations.* The city and any party-defendant to an action under this article III of
31 chapter 37 may voluntarily stipulate to temporary restraining orders, ~~seizures,~~ closures,
32 receiverships, destruction, judgments, liens, and other remedies, temporary or permanent, that

1 are different or altered from those provided in this article, including but not limited to the
2 following:

- 3 (4) Release of ~~seized~~-real property to the party presently entitled to possession, or to an agent,
4 manager, or receiver appointed under the stipulation, after the public nuisance has been fully
5 abated, steps have been taken to prevent public nuisances from recurring, sufficient action has
6 been taken to deter public nuisances, and the public interest is protected, or a suitable plan to
7 accomplish these goals has been agreed to.

8 **Section 17.** Section 37-84 of the Denver Revised Municipal Code shall be amended by
9 deleting the language stricken, to read as follows:

10 **Sec. 37-84. - Other seizures, closures, forfeitures and confiscations.**

11 Nothing in this article shall be construed to limit or forbid the ~~seizure~~, confiscation, closure,
12 destruction, or forfeiture of property now or hereafter required, authorized or permitted by any
13 other provision of law. Nothing in this article shall be construed as requiring that evidence and
14 property ~~seized~~, confiscated, closed, forfeited or destroyed under other provisions of law be
15 subjected to the special remedies and procedures provided in this article.

16 **Section 18.** Section 37-87 of the Denver Revised Municipal Code shall be amended by
17 deleting the language stricken to read as follows:

18 **Sec. 37-87. - Reporting requirements. ~~Public nuisance abatement oversight~~**
19 **~~committee.~~**

20 (a) The City Attorney's Office shall provide biannual reports to the city council on the first of
21 March covering the preceding months of September, October, November, December, and
22 January, and on the first of October covering the preceding months of February, March, April,
23 May, June, July, and August. These reports shall include the following information:

24 (1) The number and type of public nuisance cases filed and the totals of each type,
25 including:

- 26 a. The type of property;
27 b. The type of predicate offense;
28 c. The number of vehicles released to the owner or lienholder; and
29 d. The number of vehicles sold at auction.

30 (2) The amount of towing fees, storage fees, and auction revenue collected.

31 (3) Any additional information requested by council.

32 ~~(a) There is hereby established a public nuisance abatement oversight committee. The~~
33 ~~public nuisance abatement oversight committee shall oversee the implementation and~~

1 administration of articles II and III of chapter 37. The public nuisance abatement oversight committee
2 shall meet at least four (4) times annually. The public nuisance abatement oversight committee shall
3 make recommendations and reports to the mayor and city council concerning articles II and III of
4 chapter 37.

5 (b) ~~The public nuisance abatement oversight committee shall consist of nine (9) members~~
6 ~~appointed by the mayor and confirmed by ordinance from the following fields:~~

7 (1) ~~Two (2) members from registered neighborhood organizations;~~

8 (2) ~~One (1) member with financial knowledge and/or background;~~

9 (3) ~~One (1) member from the liquor and restaurant industry;~~

10 (4) ~~One (1) member from the property management industry/landlord;~~

11 (5) ~~Three (3) private property owners; and~~

12 (6) ~~One (1) member from the hotel and motel industry.~~

13 (c) ~~Members of the public nuisance abatement oversight committee shall serve for three~~
14 ~~years. Initially, to achieve a staggering of terms of the members, three shall serve a three-year term,~~
15 ~~three shall serve a two-year term, and three shall serve a one-year term.~~

16 (d) ~~The public nuisance abatement oversight committee shall elect two (2) co-chairs from~~
17 ~~its membership; at least one of the two (2) co-chairs must be a neighborhood representative.~~

18 **Section 19.** Section 2-317 of the Denver Revised Municipal Code shall be amended by
19 deleting the language stricken to read as follows:

20 **Sec. 2-317. - Functions and duties.**

21 The office of public nuisance coordination and abatement shall:

22 (e) ~~Provide semiannual reports, on July 20 of each year covering the period from January~~
23 ~~1 through June 30 and on January 20 of each year covering the period from July 1 through~~
24 ~~December 31 of the previous year, to the mayor and all city councilmembers regarding the~~
25 ~~activities of the coordinator during the previous six (6) months, including the disposition of cases~~
26 ~~filed with the city attorney or the district attorney, recommendations on how to improve~~
27 ~~coordination and cooperation within the city, and any additional information requested by the~~
28 ~~council.~~

29 (p) ~~Ensure that information on public nuisances is provided to the councilmember in~~
30 ~~whose councilmanic district the nuisance is located.~~

31 (q) ~~Advise the members of any public nuisance abatement oversight committee appointed~~
32 ~~by the mayor and confirmed by ordinance.~~

33

1
2 COMMITTEE APPROVAL DATE: April 3, 2019

3 MAYOR-COUNCIL DATE: April 9, 2019

4 PASSED BY THE COUNCIL: _____

5 _____ - PRESIDENT

6 APPROVED: _____ - MAYOR _____

7 ATTEST: _____ - CLERK AND RECORDER,
8 EX-OFFICIO CLERK OF THE
9 CITY AND COUNTY OF DENVER

10 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____

11 PREPARED BY: Marley Bordovsky, Assistant City Attorney DATE: April 10, 2019

12 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
13 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
14 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
15 3.2.6 of the Charter.

16 Kristin Bronson, Denver City Attorney

17 BY: _____, Assistant City Attorney DATE: _____