

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2012

COUNCIL BILL NO. 12-0605
COMMITTEE OF REFERENCE:
LAND USE, TRANSPORTATION & INFRASTRUCTURE

A BILL

For an Ordinance amending Sections 138, 139, 140, 141, 142, 143 and 150 of Article IX of Chapter 10, Neglected and Derelict Buildings.

WHEREAS, City Council finds that many Denver neighborhoods suffer from the ill-effects of ongoing vacant, neglected or derelict properties;

WHEREAS, City Council finds that revisions to the existing ordinance are needed to clarify existing requirements, to require an owner of a neglected or derelict property to submit a remedial plan, to establish deadlines for completion of remedial work; and to strengthen enforcement tools;

WHEREAS, City Council finds that revisions to the ordinance provisions regarding neglected and derelict building list along with changes in implementation of the ordinance would enable to the City to better keep track of facilitate abatement of neglected or derelict properties; and

WHEREAS, City Council desires the City to proactively manage, track, and enforce neglected or derelict properties.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. Section 10-138 (Neglected or derelict buildings or property prohibited) of the Denver Revised Municipal Code shall be amended by adding the language underlined, and deleting the language stricken, to read as follows:

Sec. 10-138. - Neglected or derelict buildings or property prohibited.

(a) *Purpose.* The purpose of this article is to prevent any building or property in the City of Denver from becoming or remaining neglected or derelict, as that term is defined in this article; to mitigate the blighting impacts of ~~such these buildings properties~~ structures and buildings properties; to provide for the regular inspection of ~~structures and buildings properties~~ that are or are likely to become neglected or derelict; and to ~~impose~~ assess fees for the costs of this program on those properties and owners who have and maintain ~~such any neglected or derelict buildings and~~

property.

(b) *Definitions.* As used in this article, unless the context requires otherwise:

(1) *Abate* or *abatement* means ~~the removal or correction of conditions deemed to constitute a violation of this article or the making of improvements needed to effect a rehabilitation of the property consistent with maintaining safe and habitable conditions to make the~~ neglected or derelict property compliant with the Code, including the Denver Building Code and the Denver Housing Code, and all rules and regulations adopted pursuant to them; provided however, that for a property only cited under §10-138(c)(3) because the property is not lawfully occupied and has been in violation of any provision of city or state law on three (3) separate occasions within a two-year period, compliant with the Code means compliant with the underlying city or state law giving rise to the violation of §10-138(c)(3). ~~However, the closing or boarding up of a building or structure that is found to be neglected or derelict shall not be considered to be~~ is not an abatement.

(2) *Building* means any building or structure, as these are defined in the Denver Building Code, located in the city.

(3) *Denver Building Code* means the 2009 International Building Code as amended by the 2011 Denver Amendments and all subsequent amendments and reenactments.

(4) *Denver Housing Code* means article II, chapter 27 of the Code and the rules and regulations promulgated under it, and all subsequent amendments and reenactments.

(5) *Hearing officer* means an officer or employee of the city or a person the city retained by contract to hear and decide all issues raised in a hearing.

~~(2-56)~~ *Historic property* means a structure that has been designated as a structure for preservation in accordance with ~~Chapter 30 of the Revised Municipal Code;~~ or a structure within an area that has been designated as a district designated for preservation in accordance with ~~Chapter 30 of the Revised Municipal Code;~~ or a property listed in the National Register of Historic Places pursuant to ~~Section~~ 101(a)(1)(A), National Historic Preservation Act of 1966, as amended.

~~(37)~~ *Interested person* means an owner, mortgagee, lienholder, or other person or entity that possesses an interest of record or an interest otherwise provable in property that becomes subject to the provisions of this article. ~~Interested person shall include the city~~

1 and any applicant for appointment as receiver pursuant to this article are interested
2 persons.

3 (48) *Manager* means the manager of community planning and development or the
4 manager's designee ~~anyone designated by the manager of community planning and~~
5 ~~development to act in his behalf, and with regard to a hearing for an appeal or show~~
6 cause hearing under this article, it includes a hearing officer appointed by the manager.

7 (59) *Neglected or derelict building or property* means any building, structure, utility, or
8 property the manager determined to be neglected or derelict pursuant to
9 subsection (c) of this section.

10 (610) *Neighborhood landowner* means an owner of property or neighborhood group ~~which~~
11 that represents the owner of property ~~which that~~ is located within five hundred (500) feet
12 of property that becomes subject to the provisions of this article.

13 (711) *Neighborhood nuisance* means a ~~building or property~~ that, by reason of inadequate
14 maintenance, dilapidation, obsolescence or other similar reason, is a danger to the
15 public health, safety or welfare; is structurally unsafe or unsanitary; is not provided with
16 adequate safe egress; constitutes a fire hazard; is otherwise dangerous to human life; or
17 in relation to the existing use constitutes a danger to the public health, safety or welfare.
18 The following factors To determine whether a property is a neighborhood nuisance,
19 where applicable as appropriate, and in addition to other factors that the manager finds
20 are relevant, the manager shall be are amongst those considered when determining
21 whether a property constitutes a neighborhood nuisance whether:

22 a.(A) ~~Existence of past or present~~ There have been or are eCode violations or
23 violations of other ordinances or statutoryutes violations;

24 b.(B) ~~Whether or not t~~ The structureproperty is vacant;

25 c.(C) ~~Whether or not t~~ The grounds are maintained;

26 d.(D) ~~Whether or not a~~ A building's or structure's interior is sound;

27 e.(E) ~~Vandalism or other destruction of the property~~ The property has been
28 vandalized or subject to other destructive activity;

29 f.(F) ~~Whether or not rents have been collected from the tenants by the owner~~ The
30 property is within a 1,000' radius of a school, park, or recreation center as

1 measured from the closest point of the property to the closest point of the
2 property on which a school, park, or recreation center is located;

3 ~~g.~~(G) The length of time any of the above conditions have existed; and

4 ~~h.~~(H) In the case of an occupied building ~~or structure, the failure of the an~~ owner,
5 ~~when so~~ obligated by law or lease, to provide services, make repairs,
6 purchase fuel or other needed supplies, or pay utility bills has failed to do so.

7 (I) Other relevant factors as the manager determines.

8 (12) Non-occupant owner means a natural person who owns a neglected or derelict
9 property that is not the owner's primary residence and whose primary residence is
10 located in the City and County of Denver and with regard to a corporation,
11 partnership, or limited liability company, it means a business entity that owns a
12 neglected or derelict property that is not its principal place of business and whose
13 principal place of business is located in the City and County of Denver.

14 (13) Nonresident owner means a natural person who owns property within the City and
15 County of Denver and does not maintain a principal residence within the City and
16 County of Denver and for a corporation, partnership, or limited liability company, it
17 means a business entity that owns property within the city whose principal place of
18 business or agent for service of process or both is not located within the city.

19 (814) Not lawfully occupied means property that is unoccupied or uninhabited; property that
20 is occupied or inhabited but which that is not in compliance with the Denver Housing
21 Code, article II, chapter 27 of the Denver Revised Municipal Code; property whether
22 occupied or not that is posted as unsafe, regardless of whether occupied; property
23 which that has been ordered vacated pursuant to section 1095.3.1 of the Denver
24 Building Code (or successor section); or property that is occupied only by trespassers
25 or transients seeking temporary hiding or shelter.

26 (915) Owner means the owner of any person with a legal or equitable interest in property;
27 or a person or entity who is under contract to purchase property by land
28 installment contract or under by a duly executed purchase contract; or a person who
29 is acquiring property, or a legal or equitable interest in it, through foreclosure.

30 (4016) Property means any building, structure, utility, parcel of land, or real property.

1 (17) School means an educational institution having a curriculum comparable to that of a
2 publicly supported elementary or secondary school, or any combination thereof, and
3 requiring daily attendance; or an institution that is licensed as a child care center
4 pursuant to article 6 of title 26, C.R.S.

5 (1118) Substantial and ongoing construction activity means construction activity that will
6 result in the property being in compliance with all provisions of the Code, including
7 the Denver Building Code; conducted under and pursuant to a valid building permit, if
8 a permit is required for the work; and which will result in the building being in
9 compliance with all provisions of the Denver Revised Municipal Code and the Denver
10 Building Code within the period of time established pursuant to a plan submitted by
11 the owner and approved by the manager in accordance with section 10-139(c); and
12 that has received an inspection approval under the Denver Building Code within sixty
13 (60) days of an inspection conducted under section 141 of this article.

14 (1219) Unsafe means any property defined as unsafe in the Denver Building Code as
15 currently enacted or subsequently re-enacted.

16 (c) Neglected or derelict buildings or property. A building or property shall be considered to be
17 is neglected or derelict when there exists on the property any one (1) or more of the
18 following circumstances exist on the property:

- 19 (1) The property is unsafe;
- 20 (2) The property is, for any three (3) consecutive months, not lawfully occupied, wholly or
21 partially boarded up, and does not show evidence of substantial and ongoing
22 construction activity ~~conducted pursuant to a valid building permit;~~
- 23 (3) The property is not lawfully occupied and has been in violation of any provision of city
24 or state law on three (3) separate occasions within a ~~one~~ two-year period;
- 25 (4) The property is not lawfully occupied and the tax on ~~such~~ the premises has been due
26 and unpaid for a period of at least one (1) year; or
- 27 (5) The property is a neighborhood nuisance as that term is defined in subsection
28 (b)(711) of this section.
- 29 (6) Historic property that is not being preserved in accordance with ~~G~~chapter 30 of the
30 ~~Revised Municipal Code.~~

(d) *Prohibition.* ~~No person shall allow or~~ It is unlawful for any person to permit any building or property to be neglected or derelict.

Section 2. Sec. 10-139. - (Administrative actions for enforcement and abatement) of the Denver Revised Municipal Code shall be amended by adding the language underlined, and deleting the language stricken, to read as follows:

Sec. 10-139. - Administrative actions for enforcement and abatement.

(a) *Emergency abatement or corrective action.* Whenever the manager determines that a violation of this article is an imminent hazard to life, health, property, or public welfare, the manager may order the owner or cause to immediately ~~emergency abatement of or correct~~ the condition causing the imminent hazard or may abate or correct the condition causing the imminent hazard. ~~After such abatement, the manager shall notify the owner of the property within twenty (20) working days of abatement that the abatement action has taken place, the costs of the abatement, and the owner's right to appeal the manager's decision and the costs of the abatement action under the provisions of section 12-19.~~ Within twenty (20) days of abating the imminent hazard, the manager shall notify the owner:

(1) That the City took an abatement or corrective action,

(2) The fee of the abatement or corrective action, and

(3) That under section 12-19 of the Code, the owner may appeal the manager's decisions and the fee for any abatement or corrective action the city took.

(b) *Notice of violation.* Except as provided in subsection (a) of this section, whenever the manager finds that any owner has violated or is violating this article, or any rules and regulations established hereunder, the manager may ~~cause to be served upon such person~~ issue a written notice to the owner stating the nature of the violation, the possible penalties, and any required remedial action and referring to the appeal process under section 12-19. ~~In the case of~~ For a neglected or derelict historic property, the landmark preservation commission or lower downtown design review board may request the manager to proceed with an administrative actions for enforcement and abatement action.

(c) *Remedial plan.*

(1) Whenever the manager issues a notice of violation ~~as provided for in~~ under subsection (b), the owner ~~may shall, within ten (10) days of the date of the notice,~~

1 submit a written remedial plan, in a form acceptable to the city, for the correction of
2 the violation contained in such within thirty (30) days of the date of the notice or
3 shorter period of time as stated in the notice. The remedial plan shall must include all
4 work necessary to abate the violation and deadlines for performing completing all
5 work under in the remedial plan. If such plan is approved by the manager and for so
6 long as the owner complies with the approved plan, all action under this article shall
7 be stayed.

8 (2) The A remedial plan for a historic property shall not include proposing to demolitions
9 or alter the exterior of such a historic structure unless approved by is neither
10 approvable nor allowed to be implemented, without the landmark preservation
11 commission or the lower downtown design review board's prior written approval. The
12 manager shall not approve a remedial plan for a historic property until the landmark
13 preservation commission has reviewed and approved such plan.

14 (3) Except for placement on the neglected and derelict building list in accordance with
15 141(b) and the requirements under section 143, all further enforcement action under
16 this article will be stayed if the manager approves the remedial plan and the owner:

17 (A) Complies with the approved remedial plan;

18 (B) Complies with all property related provisions of the Code (with regard to that
19 property); and

20 (C) Pays all fees and penalties related to or arising out of any violation of section
21 10-138(c).

22 (d) Determinations eligible for appeal. The owner may appeal the notice of violation,
23 requirement to post no trespassing signs, rejection of a remedial plan, the manager's
24 determination that the owner has failed to comply with an approved remedial plan, and the
25 manager's determination to order or take emergency abatement action. Placement on the
26 neglected and derelict building list, assessment of the neglected and derelict building fees,
27 and the requirements to designate an agent and file a registration statement under section
28 10-143, however, are ministerial acts or requirements that may be considered as part of an
29 determination eligible for appeal, but are not a separate basis for filing an appeal.

30 (de) Order to show cause. If no plan is submitted by the owner does not submit a remedial plan

1 within ~~ten~~ thirty (30) days of the date of notice or the shorter time period set forth in the
2 notice, or if the plan timely submitted by the owner is deemed unsatisfactory by the manager
3 owner submits a remedial plan within the prescribed time but the manager rejects it or the
4 owner does not comply with the approved remedial plan, the manager may order any owner
5 ~~who causes or allows a violation to appear of the neglected or derelict property~~ to show
6 cause before the manager why ~~a the~~ proposed enforcement action should not be taken. If
7 ~~an appeal of a decision by the manager has been filed~~ the owner appeals the notice of
8 violation, requirement to post signs, rejection of the remedial plan, or a determination that
9 the owner has not complied with an approved remedial plan, the manager may consolidate
10 the hearing on the appeal and the show cause hearing, and issue a decision ~~which~~
11 determines all issues under this article raised at the hearing.

12 (ef) *Notice of show cause hearing.* Notice of show cause hearing ~~shall~~ must be served on the
13 owner specifying: (1) the time and place of a hearing regarding the violation, (2) the reasons
14 why the action is to be taken, and (3) the proposed enforcement action. The notice ~~shall~~
15 must direct the owner to show cause why the proposed enforcement action should not be
16 taken. If ~~the manager a consolidated~~ the show cause hearing ~~is to be held to include and~~
17 ~~an appeal hearing~~, the notice must ~~shall so~~ indicate that the hearings have been
18 consolidated.

19 (fg) *Service of notices of show cause hearing.*

20 (1) A notice of violation, placement on the neglected and derelict building list under
21 section 141(b), and the show cause hearing must be served on the owner. The
22 notice of violation and notice of placement on the neglected and derelict building list
23 may be served by hand delivery to the owner or by sending it first-class mail, postage
24 prepaid and by posting them on a conspicuous place on the property. The notice of
25 ~~show cause shall be served personally~~ Service of the notice of show cause hearing
26 may be made by hand delivery to the owner, or by certified mail, return receipt
27 requested and postage prepaid, or by the methods provided in the Colorado Rules of
28 Civil Procedure. Service of any of these notices by mail must be addressed to the
29 owner as shown in the records of the assessor's office. The notice of show cause
30 hearing must be served at least ten (10) days before the hearing. If service is by
31 ~~certified mail, the notice shall be placed in the United States mail and addressed to~~
32 ~~the owner as shown in the records of the assessor's office. If the notice so mailed is~~

not returned as undeliverable by the United States Postal Service, notice shall be presumed to have been given on the date of mailing.

(2) A notice of violation and notice of placement on the neglected and derelict building list that is mailed in accordance with these requirements is complete upon placement in the mail. A notice of the show cause hearing that is mailed in accordance with these requirements is considered served on the date mailed unless it is returned as undeliverable. (For purposes of this section article, unclaimed or refused mail shall not be considered is not undeliverable.) Service on a corporation may be made as provided in the Colorado Rules of Civil Procedure.

(3) If personal service of the notice of show cause hearing cannot be accomplished by any of the above methods, service may be made by posting the notice it in a conspicuous place on the property for at least ten (10) days prior to before the hearing and publicationshing of the noticeit once in a daily newspaper of general circulation at least ten (10) days and no more than twenty (20) days before the hearing.

(gh) *Show cause hearing.* The hearing shall must be conducted in accordance with rules and regulations issued by the manager. If the notice of show cause hearing has been given served in compliance with this section 10-139(g), the hearing shall will take place regardless of whether or not the owner appears.

(hi) *Presumption.* The owner has the burden of proving the correctness of its position by a preponderance of the evidence. Any All of the manager's determinations or and findings of the manager shall be are presumed to be correct until sufficient evidence is introduced which that would support a contrary finding.

(ij) *Designation of Hhearing officer.* The manager may hold such the hearing or may designate an officer or employee of the City and County of Denver or a person retained by contract by the manager a hearing officer to hear and decide all issues raised in the hearing. For purposes of deciding any preliminary matter related to a hearing; conducting a hearing; making any determination and finding; issuing subpoenas and orders; and assessing civil penalties and fees, the hearing officer has all the powers and authority vested in the manager under this article.

(jk) *Determination; civil penalties/final order.* The manager shall:

(1) ~~Make a written determination within thirty (30) days of the hearing, which shall be sent to the owner by certified mail and in the same manner as provided in subsection (f) of this section. must be reduced to writing and sent to the owner within thirty (30) days of the hearing. Such~~ The determination shall be a is the final order and is reviewable under Section Rule 106(a)(4) of the Colorado Rules of Civil Procedure. Each party may file a motion for correction to or clarification of the order, which must be filed within seven (7) days of the date the order is issued. Unless a motion for correction or clarification is timely filed, the time period to file an appeal under Rule 106(b) commences on the date the final order is issued. If a motion for clarification or correction is filed, that time period commences on the date the correction or clarification to the final order is issued. ~~Unless approved by the landmark preservation commission, required abatement action on a historic property shall not include demolition of such historic structure;~~

(2) ~~Include in the written determination~~ final order:

(A) ~~af~~ Findings of fact and a determination as to ~~of~~ whether any violation has occurred;

(B) Identification of any mitigating or aggravating circumstances;

(C) ~~t~~ The amount of any civil penalty, fee, cost, or combination thereof to be imposed assessed as provided for in under subsections 139(km), any penalty imposed under sections 10-141, and/or 10-15042, and the costs of the hearing, and when such penalty, fees, and costs are due; and

~~(3) —~~ (D) Set a deadline for any required abatement action to be performed.

(kl) Service of the written determination and final order. ~~The written determination and final order must be sent to the owner by first-class mail, postage prepaid.~~

(km) Civil penalties. ~~The manager or a hearing officer designated as provided in subsection (b) may impose assess a civil penalty of not more than nine hundred ninety-nine dollars (\$999.00) per day for each day any building or property the owner is found to have violated this article, any order issued by the authority of this article, or any rules, and regulations, or permits issued hereunder adopted by the manager, or permit issued for work related to an approved remedial plan. In imposing any civil penalty for a violation of section 10-138(c), the~~

manager ~~shall, after the show cause hearing, may~~ consider the history of violations, whether the owner was deliberate or negligent, ~~the effect on the owner's ability to continue in business, whether the structure is~~ neglected or derelict property is a historic property, the gravity of the violation, ~~and the demonstrated good faith of the owner in attempting to achieve timely compliance after notification of a violation.~~ Additionally, when the neglected or derelict property is lawfully used for commercial purposes, the manager may consider the effect of civil penalties on the owner's ability to continue the business. Unless otherwise expressly stated in the final order, civil penalties assessed under this article are due and payable within thirty (30) days of date of invoice, which must be sent first-class mail, postage prepaid, to the address shown in the records of the assessor's office, the address the owner provides to the city (including under section 10-143), or an address for the owner the city discovers through its own efforts.

(ln) *Judicial enforcement.* In addition to all other remedies set forth in this article, ~~The city may petition the district court for the issuance of a preliminary or permanent injunction, or both, restraining any person from continued violation of this article, and/or may seek appointment of a receiver, all as provided in section 10-140. In any such that action, the city may seek recovery of any unpaid civil penalties, abatement costs, and other fees and costs provided for in this article by seeking appropriate relief in a court of competent jurisdiction.~~

(mo) *Posting of no trespassing signs and other warning signs.* Upon or after issuing a notice of violation under section 10-138(c), ~~The city is hereby empowered may, or may require the owner to, post a signs near all each possible access points of likely access to buildings or the propertiesy that are subject to the provisions of this article, or to require such posting by the owner of the property, prohibiting trespassing and warning the public of danger. When required to post~~ If a signs is required to be posted under this article, within the time period requested by the manager, the owner shall post the sign(s) and provide written authorization to the manager a letter authorizing allowing the arrest of any trespassers. Such signs may be posted upon a finding by the manager that a building or property is neglected or derelict as defined in this article. Such signs may be posted before or after commencement of actions brought pursuant to this article. Any findings made hereunder may be appealed in accordance with section 12-19.

Section 3. Sec. 10-140. - (Court actions for abatement) of the Denver Revised Municipal Code shall be amended by adding the language underlined, and deleting the language

1 **stricken, to read as follows:**

2 **Sec. 10-140. - Court actions for abatement.**

3 (a) If, after notice and hearing pursuant to this article and a finding of a violation of this article,
4 the owner has failed to abate the violation or comply with abatement deadlines ~~provided in~~
5 the manager's ~~written determination final order~~ or in an approved remedial plan of
6 abatement, the city, an affected neighboring landowner, or any other person who has
7 suffered damages due to the condition of the property and otherwise has legal standing to
8 bring legal action, may commence an action ~~for abatement under this article may be~~
9 ~~commenced~~ in the district court pursuant to Rule 65 or 66 of the Colorado Rules of Civil
10 Procedure for abatement under this article by the city, an affected neighboring landowner or
11 any other person who can establish damages resulting from the condition of the property.
12 ~~Such~~ These actions may request:

- 13 (1) An injunction ordering the owner of property to take whatever action the court considers
14 necessary or appropriate to ~~correct the condition or to eliminate~~ abate the violations;
15 and/or
- 16 (2) The appointment of a receiver to take possession and control of the property, and to
17 ~~perform complete all~~ work and to furnish material that reasonably may be required to
18 abate the violation. All interested persons ~~shall~~ must be made parties to the action.
- 19 (3) ~~That, by way of example but not limitation, the court authorize the receiver to exercise as~~
20 ~~appropriate any of the following powers:~~ The court to appoint a receiver to exercise any
21 of the powers listed below.

22 ~~a.~~ (A) Take possession and control of the property, operate and manage the property,
23 establish and collect rents and income, lease and rent the property, and evict
24 tenants. An existing ~~housing or building ordinance violation of the Denver Building~~
25 ~~or Denver Housing Codes~~ does not restrict the receiver's authority pursuant to
26 this subsection.

27 ~~b.~~ (B) Pay all expenses of operating and conserving the property including, ~~but not~~
28 ~~limited to,~~ the cost of electricity, gas, water, sewerage, heating fuel, repairs and
29 supplies, custodian services, taxes, assessments, and insurance premiums, and
30 to hire and pay reasonable compensation to a managing agent.

1 ~~e.(C)~~ Pay pre-receivership mortgages and other liens and installments of pre-
2 receivership mortgages and other liens.

3 ~~d.(D)~~ Perform or enter into contracts for the performance of work and the furnishing of
4 materials necessary to abate the violations, and obtain financing for the
5 abatement of violations.

6 ~~e.(E)~~ Pursuant to court order, remove and dispose of personal property ~~which~~ that is
7 abandoned, stored, or otherwise located on the property, that creates a
8 dangerous or unsafe condition, or that constitutes a violation of ~~housing or~~
9 ~~building regulations or ordinances~~ the Code, including the Denver Building,
10 Denver Housing, and Denver Zoning Codes.

11 ~~f.(F)~~ Enter into agreements and take actions necessary to maintain and preserve the
12 property and to comply with ~~housing and building regulations and ordinances~~ the
13 Code, including the Denver Building, Denver Housing, and Denver Zoning Codes.

14 ~~g.(G)~~ Give the custody of the property and the opportunity to abate the violation and
15 operate the property to the owner or to a mortgagee or lienholder of record.

16 ~~h.(H)~~ Issue notes and secure the notes by deeds of trust on the property on terms,
17 conditions, and at ~~such~~ interest rates all as ~~are~~ approved by the court.

18 ~~i.(I)~~ Obtain mortgage insurance for a receiver's mortgage.

19 (J) Any other action that the court considers appropriate.

20 (4) That all costs, including the costs of the receivership, expenses, penalties, and all fees,
21 ~~including any receiver's fees~~, be assessed against the owner and made a lien against
22 the property, taking precedence over and being superior to all other liens of record
23 except liens for general taxes and special assessments.

24 (5) That, at the request of the party that applied for the receivership, ~~may request that~~ the
25 court discharge the receiver.

26 (6) That if repair and rehabilitation of the property are not found to be feasible, upon the
27 written request of all known interested persons who have appeared in the action, to have
28 the property or portions of the property demolished, the court order the demolition of all
29 or part of the property. The court may require the receiver to determine the cost of
30 demolition of the property or the portions of the property that constitute the violation, and

after court approval, the receiver shall arrange for demolition ~~which shall comply with all permit and other requirements of the Denver Building Code in accordance with state laws, the Code (including the Denver Building Code and Chapter 30 Landmark Preservation), and any permit issued under these authorities.~~ However, demolition ~~shall~~ must not be ordered unless the requesting persons have guaranteed or underwritten the costs of demolition, have paid the costs of the receivership, and have paid all notes and mortgages of the receivership. ~~In addition Nothing in this article or a court order arising out of a court action authorized under this section limits~~ the city's ~~maintains the right to~~ demolish any property ~~which that~~ the city is authorized to demolish pursuant to the provisions of the Denver Building Code. ~~The provisions of this subsection shall not apply to a historic property until the landmark preservation commission approves such demolition.~~

- (7) Nothing in this article ~~shall limits or prohibits~~ the city from exercising or using other remedies or procedures to enforce this article, the Denver ~~Building, the fire codes, the housing ordinances, or the zoning ordinances~~ Fire, Housing, or Zoning Codes.

Section 4. Sec. 10-141. (Inspection and fees) of the Denver Revised Municipal Code shall be amended by adding the language underlined, and deleting the language stricken, to read as follows:

Sec. 10-141. - Inspection and fees.

- (a) *Inspection.* Whenever the manager has reason to believe that a ~~building or property~~ is a neglected or derelict ~~building or property~~ as defined in this article or when requested by the landmark preservation commission or lower downtown review board to inspect a historic property, the manager shall ~~cause an inspection to be done the property to determine if the building or property it~~ complies with this article and all other applicable laws and codes, including rules and regulations pursuant to them. ~~In the event If, after inspection, the manager finds after inspection that a building or property is a neglected or derelict building or property, the manager shall cause~~ may issue a written notice ~~to issue of violation and shall otherwise proceed pursuant to under~~ section 10-139 of this article.
- (b) *Neglected and derelict building list.* If the manager ~~makes a written determination issues a notice of violation pursuant to subsection (c) of section 10-139(b), that a violation of this article has occurred~~ the property ~~will~~ must be placed on the neglected and derelict building

(NADB) list maintained by the manager. The manager shall ~~cause-issue~~ issue a notice of placement on the NADB list ~~to be sent to the owner that the building or property has been placed on the NADB list.~~ The notice ~~shall~~ must include:

(1) The property's address and a legal description of the property;

(2) ~~A~~ Concise statement as to the basis of the manager's determination; and

(3) ~~A statement that~~ A brief explanation about the fee required by assessment of fees under this section must be paid; and,

~~(4) A statement that this determination may be appealed under section 12-19~~

(c) *Quarterly inspection.* The manager shall conduct, at a minimum, quarterly inspections of neglected or derelict ~~buildings or~~ properties to ensure compliance with applicable codes.

(d) *Compliance.* When all violations of the Code have been ~~corrected~~ abated and a neglected or derelict ~~building or~~ property has been legally reoccupied, or when the building has been demolished and the lot cleared in accordance with provisions of this Code, the property ~~shall~~ will be removed from the NADB list.

(e) *Assessment of fees.*

(1) The NADB list fee will not be assessed against the owner so long as the owner meets all of the requirements below. Upon failure to meet any of the three conditions below, however, The owner of any neglected or derelict building or property shall be assessed a nonrefundable yearly fee of one thousand dollars (\$1,000.00) will be assessed against the owner, payable on each neglected or derelict building or property under his or her ownership or control that appears on the NADB list. The initial fee will be assessed upon failure to:

(A) Submit an approvable remedial plan in accordance with section 10-139(b) or failure to comply with any of the deadlines set forth in an approved remedial plan;

(B) Comply with any property related provision of the Code; or

(C) Pay all other fees and penalties related to or arising out of any violation of section 10-138(c) within the prescribed time period.

(2) Once the fee has been assessed, for each subsequent twelve-month period or part thereof that his the property appears remains on the NADB list, the fee will be

1 assessed on the anniversary date of the initial assessment. The fee is due and
2 payable thirty (30) days from the date of the notice that the building or property is on
3 the NADB list, and will be assessed for each twelve-month period or part thereof that
4 his property appears on the NADB list. of the invoice. The assessment unless may be
5 it is paid in quarterly installments of two hundred fifty dollars (\$250.00);. For quarterly
6 the first payments, coming the first payment is due and payable when the annual
7 payment would have been due thirty (30) days from the date of the invoice and the
8 remaining payments are due and payable on a quarterly basis calculated from the
9 date of the initial assessment. If any annual or quarterly or annual payment of the
10 assessment is more than thirty (30) days past due, a penalty of fifty dollars (\$50.00)
11 late fee shall will be assessed. Amounts past due may be collected as provided by
12 law.

13 (f) ~~Waiver of assessments.~~ The manager may waive the assessments imposed under this
14 ~~section, if the following conditions are met:~~

- 15 (1) ~~Arrangements have been made to pay all delinquent fees and penalties not waived;~~
16 (2) ~~A plan and timetable for the repair and maintenance or demolition of the building or~~
17 ~~property has been submitted by the owner and approved by the manager; and~~
18 (3) ~~The property is being maintained so that it does not violate any applicable law or the~~
19 ~~owner is acting in a timely fashion in adherence to the approved plan.~~

20 (g) ~~Appeals.~~ An owner who has been affected by a determination made pursuant to the
21 ~~provisions of this section may appeal that determination to the manager as provided in section 12-~~
22 ~~49.~~

23 **Section 5. Section 10-142 (Collection of assessments; liens) is added to the Denver**
24 **Revised Municipal Code to read as follows:**

25 **Sec. 10-142. Collection of assessments; liens.**

- (a) The civil penalties provided for in sections 139, 141, and 143 are cumulative as are the assessment of any costs and fees under this article. Failure to pay any civil penalty, cost, or fee, including the interest thereon, assessed under this article within thirty (30) days of the date of the invoice is unlawful. If a civil penalty, cost, or fee, including the interest thereon, is not paid in accordance with this article within thirty (30) days of the date of the invoice, without limiting any other remedy the city has at law or in equity, the City may:
- (1) Send the matter to collection under sections 2-292 and 2-294 of the Code; and
- (2) File for injunctive relief in district court under section 10-139 of this article.
- (b) Additionally, if an owner fails to pay the civil penalty, costs, or fee, including the interest thereon, within that thirty-day period, the assessment will become a lien on the property. The lien perfects automatically and has priority over all other liens except general taxes and prior special assessments.
- (c) If an assessment of a civil penalty, cost, or fee, including the interest thereon, converts into a lien, the manager is responsible for collecting the assessment, together with a ten percent penalty for the cost of assessment.
- (d) Until a civil penalty, cost, or fee, including interest thereon, assessed under this article that is not pending appeal has been paid in full, the city shall not issue or renew any license or permit to the owner.
- (e) Failure to pay any outstanding civil penalty, cost, or fee, including interest thereon, assessed under this article that is not pending appeal is grounds for suspension or revocation of any license issued by the city until fully paid.

Section 6. Section 10-150 (Registration of nonresident property owners and agents) of the Denver Revised Municipal Code shall be renumbered to Section 10-143 and amended by adding the language underlined, and deleting the language stricken, to read as follows:

Sec. ~~10-150~~143. - Registration of ~~nonresident~~ property owners and agents.

- (a) ~~By May 1, 1995, and thereafter upon the sale, purchase or other transfer of ownership of any property for which the owner or agent is required to register hereunder, or upon the changing of a principal residence by an owner from within the city to a location outside of the city, every nonresident owner of property within the city, whether such property is occupied or vacant, shall file a registration statement on a form to be provided by the~~

1 ~~manager of finance for each parcel, building or unit, and shall update the statement~~
2 ~~whenever any of the information supplied changes. Any person designated as the~~
3 ~~authorized agent of an owner shall notify the manager of finance whenever he or she~~
4 ~~ceases to be the authorized agent. On or after [effective date of ordinance], any nonresident~~
5 ~~owner to whom a notice of violation was issued under this article shall designate a person~~
6 ~~meeting the qualifications in section 10-143(a)(2) to accept all forms of service for any~~
7 ~~notice, order, citation, summons, complaint, and all other documents relating to or arising~~
8 ~~out of enforcement of the Code for violations concerning to the property cited under this~~
9 ~~article and to accept service of process in any civil action in which the nonresident owner is~~
10 ~~alleged to be liable based upon ownership of the property or upon transactions related to~~
11 ~~rental of it. The owner shall file a registration statement on a form acceptable to the city~~
12 ~~within thirty (30) days of service of a notice of violation.~~

13 (1) The registration statement must include:

14 (A) A description of the property by street number or otherwise, in such a manner as to
15 enable the manager to find it.

16 (B) The name and current address of the owner of record, and if the owner is a business
17 entity, the statement must also contain the name and address of its registered agent.

18 (C) The name and business address of the agent designated to accept service for the
19 matters in section 10-143(a).

20 (2) The agent designated must be a natural person eighteen (18) years of age or older who
21 is customarily present in an office in the city for the purpose of transacting business, or
22 whose primary residence is within the city.

23 ~~(b) A nonresident owner is any natural person who does not maintain a principal residence~~
24 ~~within the City and County of Denver or any corporation, partnership or limited liability~~
25 ~~company whose principal office and/or agent for service is not located within the City and~~
26 ~~County of Denver. Any non-occupant owner to whom a notice of violation under this article~~
27 ~~is issued on or after [effective date of ordinance], for property that is neither the owner's~~
28 ~~primary residence nor its principal place of business, shall file a registration statement~~
29 ~~setting forth the information in sections 10-143(a)(1)(A) and (B). If the notice of violation was~~
30 ~~issued to the non-occupant owner on or before [effective date of ordinance], the owner shall~~
31 ~~file the registration by December 31, 2012. If the notice of violation was issued to the non-~~

1 occupant owner after the [effective date of ordinance], the owner shall file a registration
2 statement within thirty (30) days of the date that the notice of violation was issued.

3 ~~(c) Registration shall contain the following information:~~

4 ~~(1) A description of the premises by street number or otherwise, in such a manner as to~~
5 ~~enable the manager of finance to find the same.~~

6 ~~(2) The name and address of the owner of record and, in addition, if the owner is a~~
7 ~~corporation, the name and address of the registered agent of such corporation.~~

8 ~~(3) The name and business address of a natural person eighteen (18) years of age or older~~
9 ~~who is customarily present in an office in the city for the purpose of transacting business,~~
10 ~~or who actually resides within the city, and who shall be designated by the owner as the~~
11 ~~authorized agent for receiving notices of violations of the housing code, building code,~~
12 ~~fire code, zoning ordinance, or any other ordinance of the city, and for receiving service~~
13 ~~of process on behalf of such owner in connection with the enforcement of ordinances~~
14 ~~relating to such property, or service of process in any civil action in which the owner is~~
15 ~~alleged to be liable based upon ownership of the premises or upon transactions related~~
16 ~~to rental of the premises.~~

17 (d) *Penalties:*

18 (1) Any ~~person~~owner who fails to designate an agent to accept service or who fails to
19 ~~register~~file a registration statement as required by this section ~~shall be~~is subject to a
20 separate civil penalty of not more than five hundred dollars (\$500.00) per day for each
21 day ~~such person~~ the owner has failed to designate an agent or remains unregistered up
22 to a total of fifteen thousand dollars (\$15,000.00). If a person~~the owner~~ is in compliance
23 with this section at the time of a hearing as provided in subsection (d)(2) below, and it is
24 the first time that ~~such person~~ the owner has failed to register under comply with this
25 section, ~~the~~this penalty ~~shall~~may not exceed five hundred dollars (\$500.00).

26 (2) ~~Penalties shall be determined by the manager of public works after a hearing as to~~
27 ~~propriety and amount thereof held pursuant to a notice to the owner. In assessing the~~
28 civil penalty, the manager shall may consider the history of all Code violations
29 concerning the property for which the owner has been noticed, the appropriateness of
30 such penalty to the size of the business of the owner, whether the owner was negligent,

1 ~~the effect of the owner's ability to continue in business, the gravity of the violation, effect~~
2 ~~of the failure to register on enforcement action, and the and whether the owner has~~
3 demonstrated good faith of the owner in attempting to achieve rapid compliance after
4 notification of a violation. Additionally, when the property is lawfully used for commercial
5 purposes, the manager may consider the effect of civil penalties on the property owner's
6 ability to continue the business. The assessment of the civil penalty may be appealed
7 under section 12-19 of the Code.

8 ~~(3) If not paid, penalties may be collected by the manager pursuant to subsections (d) and~~
9 ~~(e) of section 10-139, or by action initiated in the district court for collection of such~~
10 ~~penalty.~~

11 (e) ~~The manager of finance shall be notified~~ The owner shall notify the manager of any change
12 in the designated authorized agent or ownership not later than ten (10) days after the
13 change.

14 (f) Except as provided in subsection (g) of this section, the registration of owners filed with the
15 manager of finance under this section ~~shall be~~ is confidential and not open to the public.
16 The manager of finance ~~shall upon request of any law enforcement agency make available~~
17 the information contained in ~~such the~~ registrations upon request of any law enforcement
18 agency.

19 (g) ~~The manager of finance shall~~ will make available for public review the following information,
20 and any subsequent amendments thereto, upon request identifying the property by address:

21 (1) A description of the ~~premises~~ property by street number or otherwise.

22 (2) The name of the owner of record and, in addition, if the owner is a corporation, the name
23 and address of ~~the its~~ registered agent of ~~such corporation.~~

24 (3) The name and address of the owner's agent as shown in the manager's records ~~of the~~
25 ~~manager of finance.~~

26 **Secs. 10-144—10-174. - Reserved.**

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30 COMMITTEE APPROVAL DATE: September 18, 2012

1 MAYOR-COUNCIL DATE: September 25, 2012
2 PASSED BY THE COUNCIL: _____, 2012
3 _____ - PRESIDENT
4 APPROVED: _____ - MAYOR _____, 2012
5 ATTEST: _____ - CLERK AND RECORDER,
6 EX-OFFICIO CLERK OF THE
7 CITY AND COUNTY OF DENVER
8 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2012; _____, 2012
9 PREPARED BY: Katherine L. Wilmoth, Assistant City Attorney DATE: September 13, 2012
10 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
11 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
12 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
13 3.2.6 of the Charter.
14 David W. Broadwell, Denver City Attorney
15 BY: _____, Assistant City Attorney DATE: _____, 2012