



**DENVER**  
THE MILE HIGH CITY

# **Public Nuisance Abatement Ordinance Amendments: Safety Committee April 2019**

Denver City Attorney's Office  
Denver Police Department

- The purpose of the law is remedy public nuisances, **not to punish.**
- The law is designed to:
  - ❖ **Remove** real property, motor vehicles, and personal property from criminal use and as a base of criminal operations,
  - ❖ Ensure that **criminal activity and the use of property for criminal purposes is unprofitable,**
  - ❖ To disgorge profits of criminal activity, and
  - ❖ To **make property owners vigilant** in preventing public nuisance offenses on, in, or by the use of their property, and making property owners **responsible** for the public nuisance use of their property by tenants, guests and occupants, and to deter public nuisances.

- Generally, there are certain crimes that qualify as a **predicate offense** for a civil action against property.
- The offenses include such crimes as:
  - ❖ Prostitution,
  - ❖ Sex assault,
  - ❖ Gang activity,
  - ❖ Eluding,
  - ❖ Speed contests (drag racing),
  - ❖ Driving as an habitual traffic offender (HTO).

- The City files a civil suit against the property in order to “close” it, meaning it cannot be used by the owner for a period of time.
- **Cars** can be closed for 6 months to 1 year
- **Real property** can be closed for 1-3 years.

- Since the law has been in effect, we have learned that the current language of the ordinance is fairly rigid and that some of the mandatory timelines are uncompromising.
- We have received feedback about frustrations from City Attorneys, Judges, DPD, and citizens.
- The ordinance has not been significantly updated or amended in more than a decade.

## Lesson Learned: The Ordinance is an Important and Effective Tool for Law Enforcement

- It is a great asset in **protecting human lives**, especially in cases where criminal consequences are limited or apprehension of the criminal is impossible.
- It is a vital **problem solving tool** for the DPD.
- Nuisance Abatement takes the **means of crime** out of the hands of criminals.



## ➤ Philosophy of PNAU

- Predicate Offenses
- Closing Properties
- Voluntary Abatement
- Collaboration

## ➤ Goals of PNAU

- Revitalize  
Neighborhoods
- Encourage Good  
Neighbors
- Involving Property  
Owners

## ➤ Changes in Implementation by PNAU

- Marijuana Grows
- Other Changes in Policy

➤ **Drag Racing and Speed Exhibition** - endangering innocent citizens.

- Approximately 70 vehicles a year have been taken off the road for participation in drag races.
- Groups have come from out of state to stage drag racing competitions in Denver on freeways and other public streets. They then left the state making a criminal action difficult.





## ➤ Eluding

- ❖ Many instances of nationwide cases of an eluding driver killing innocent citizens while fleeing.
- ❖ 429 vehicles were taken off the streets last year alone for eluding.
- ❖ With the no pursuit policy, drivers fleeing from police may avoid a criminal penalty even when we can identify the vehicle.

## ➤ Habitual traffic offenders

- ❖ Approximately 550 unlicensed, uninsured drivers each year have had access to vehicles taken away.



## ➤ Gun Violence

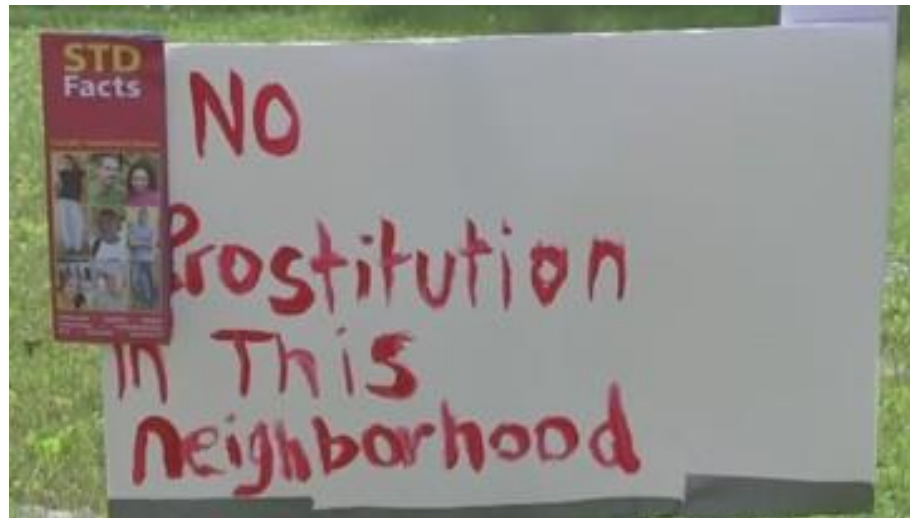
- ❖ 177 vehicles were detained in 2018, many out of the hands of violent offenders.
- ❖ Whether a person is directly targeted or an innocent bystander is in the line of fire, these crimes pose a significant threat to public safety.
- ❖ Even if the actual shooter cannot be identified (which is common), being able to hold the vehicle owner accountable helps deter criminal activity.



- Illegal **distribution of drugs**, such as heroin and methamphetamine.
- Trying to remove the **distribution** of these drugs from our streets is a never ending struggle for law enforcement.



- **Prostitution** and the attendant drug, theft and other petty crime problems degrade our neighborhoods.
- Prostitution cases have been steadily decreasing, based in large part on the nuisance program.



- THE AMENDMENTS TO THE PUBLIC NUISANCE ABATEMENT ORDINANCE ARE DESIGNED TO:
  - **BALANCE** THE NEED FOR THIS EFFECTIVE TOOL TO COMBAT CRIMINAL CONDUCT IN OUR COMMUNITY
  - WITHOUT BEING **UNNECESSARILY PUNITIVE OR RIGID.**

- SOME PARTS OF THE ORDINANCE WILL REMAIN THE SAME:
  - ❖ Provisions providing relief to “Non-involved Owners” will remain intact
    - ❖ If the owner neither participated in the criminal behavior, nor
    - ❖ Knew or reasonably should have known that the property would be used for criminal behavior or that the offending user had engaged in prior similar conduct or that the offending user had a prior record for criminal behavior.

## Lesson Learned: Some Language Has Become Obsolete Over Time

- Delete **obsolete language** which referenced Colorado State Statutes which have been re-codified under a different citation number.
- The corrected state statute is then added to reflect the **correct citation number**.
- Elimination of **repetitive and unnecessary** language regarding the **procedures** for a nuisance abatement action.

- Clarification that “**speed exhibition**” is included under C.R.S. 42-4-1105 as a nuisance offense.
- Adding possession of a **weapon** in a motor vehicle upon **school property** as a nuisance offense.
- Adding the City Violation of Solicitation for Prostitution.





- The ordinance language will be changed to remove the word “seize” and replace it with “detain” or “close” property.
- To clarify that we only detain or close property rather than permanently seize or forfeit property.



## Lesson Learned: Some Crimes Don't Justify this Relief

- **Less serious predicate offenses** are deleted.
- These Class 2 offenses included:
  - ❖ Possession of Injection Device, and
  - ❖ Two (2) or more offenses within any one-hundred-eighty day period of prohibited noises.



## Lesson Learned: Monetary Penalties **Can Disproportionately Affect** **Our Most Vulnerable Citizens**

- The City will no longer seek or collect the \$2,000 civil judgment if the court enters a **default judgment** and finds that the vehicle is **abandoned**.
- If an owner chooses not to contest the nuisance complaint, the City will not collect any further money from the owner and the car will be sold at auction like any other abandoned vehicle.
- This Ordinance is about public safety, quality of life in our community and deterrence, not for revenue generation.



## Lesson Learned: **Some Procedures Don't Really Serve the Intended Purpose**

- Eliminates the posting of the temporary restraining order on motor vehicles.
- Posting of the TRO on a motor vehicle was not a meaningful requirement because the vehicle is impounded at the Denver Sheriff's Impound Facility, which is a secured enclosure.
- Maintains mailed service to the owner at the address of record on the Colorado Motor Vehicle titled address.



# Lesson Learned: Fairness and Equity Require Greater Flexibility and Protection

- Greater protection for the owner means we increase the burden of proof at trial for a nuisance abatement action.
- The burden is being changed to a **“Clear and Convincing” standard** from the original standard of “Preponderance of the Evidence.”
  - ❖ This heightened burden is higher than other civil suits
  - ❖ This is what the Department of Human Services needs to prove to take a child out of a home.



- Modify inconvenient or **difficult procedures** for property owners who want to have a hearing on a Temporary Restraining Order.
- The process is simplified so that the property owner needs only to file a motion, serve the City Attorney and get a hearing date within a practicable timeframe.



- The Ordinance currently allows automobile owners to petition the Manager of Safety for a reduction of tow and storage fees.
- The Amendment adds the ability for the Court to **reduce the tow and storage fees** upon a showing of good cause.



- Creates authority for the court to **modify or delay the temporary restraining order** in order to accommodate the special circumstances of the party to the action.
- The court must make written findings that any modification or delay of the TRO does not jeopardize **public health, safety, and welfare.**





## Lesson Learned: Committees Aren't the Only Way to Provide Oversight and Transparency

- The **Civilian Oversight Committee** has not been an effective oversight to the program.
  - ❖ It has never been fully staffed and would be replaced by better reporting.
- Biannual reporting to City Council provides more transparent oversight of the nuisance abatement program.
- The new reporting requirement provides meaningful information about the enforcement of the nuisance ordinance.



- ✓ Continued briefings with City Council members
- ✓ Continued outreach with external stakeholders (ACLU, INC)
- ✓ SafeHouse presentation tentatively scheduled for March
- ✓ First and second reading at Council in April



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**Questions?**