

<p>Littleton Municipal Court 2069 W. Littleton Blvd. Littleton, CO 80120</p> <p>PEOPLE OF THE STATE OF COLORADO, Plaintiff.</p> <p>Robert Wallace Attleson, Defendant.</p>	
<p>MARTIN LAW LLC Susan M. Martin #33994 1823 S. Carr Street Lakewood, CO 80232 Phone: 303-733-1088 Fax : 303-282-6593 Email: susanmartin2003@msn.com</p> <p>And MACOLINI LAW Ruthann Macolini #33399 P.O. Box 24716 DENVER, CO 80224</p>	<p>Ticket Number M20597 Judge Kimmel</p>
<p>EMERGENCY MOTION FOR HEARING ON ILLEGAL SEIZURE OF PROPERTY</p>	

COMES NOW, the Defendant, Robert Wallace Attleson, by and through his attorneys, Susan M. Martin, #33994 of Martin Law LLC, and Ruthann Macolini, #33399 of Macolini Law, and respectfully requests that the Court conduct an emergency hearing and issue Orders of injunctive relief for the Defendant in order to prevent the destruction or loss of value of chattel, namely eight dogs.

IN SUPPORT OF THIS MOTION, the Defendant respectfully asserts:

1. That on the 15th day of February, 2008, after an emergency hearing where the Defendant was not given notice or afforded the opportunity to appear or give

evidence, the Court entered orders authorizing the forcible seizure of the Defendant's property.

2. Subsequently, the City of Littleton by and through its agents did forcibly enter into the Defendant's property and upon finding eight dogs, did seize all eight of the animals which included four puppies under the age of two months.

**BASIS FOR THE FORCIBLE RAID AND SEIZURE OF DEFENDANT'S PROPERTY
WAS A PURPORTED VIOLATION OF FOUR MUNICIPAL ORDINANCES**

3. That forcible entry by the City was accomplished via an Application for Search Warrant and Affidavit that asserted violation of the following municipal codes:

- a. 10-4-4(B)(3) – Accessory Uses and Structures

- i. (B) Limitations on Accessory Uses

1. (3) Maximum Number Of Pets: Household pets are permitted; provided, that not more than three (3) pets are adult dogs, cats, chickens, ducks, or rabbits or any combination of these species. The numbers of these species younger than six (6) months are not restricted. This does not preclude the legitimate use or keeping of any laboratory animals for scientific research, or veterinarian purposes or for resale in a pet shop. This shall not be interpreted to prohibit the keeping of livestock in districts where permitted.

- a. Four of the dogs seized were valuable show quality puppies under the age of two months.
 - b. The other four dogs included females and a dog that had recently undergone emergency surgery and was under medical care for its post-operative conditions.
- b. 6-2-9 – Illegal Kennels Prohibited
 - i. It shall be unlawful for any person to keep, operate, or maintain a dog or cat kennel in any zone restricting such use within the City, and such keeping, operating, or maintaining is hereby declared to be a public nuisance. (Ord. 21, Series of 1977)
- c. 6-2-10(A) – Unlawful to Violate Numbers Restrictions
 - i. On and after January 1, 1978, it shall be unlawful for any person to maintain on one property in any City residential zone the combined total of more than three (3) dogs or cats over the age of six (6) months or more than one litter of dogs or cats.
- d. 6-1-3(B) – Cruelty to Animals
 - i. It shall be unlawful for the owner, possessor or keeper of any animal to negligently or intentionally deprive such animal of adequate and wholesome food and water, protection from the elements, opportunity for exercise, or adequate veterinary care, or otherwise neglect such animal in such a manner as to endanger its health or cause it to suffer. (Ord. 18, Series 1982)

1. The only allegation of unsanitary conditions ever cited by animal control agents occurred in March of 2007 and the allegation was that the smell of urine might harm puppies' lungs. This conclusion is utterly without merit and contrary to animal care health standards of practice.
2. That an inspection by the Denver Dumb Friends League, obtained by the Defendant at his own request in May of 2007 found that no dangerous conditions existed at the Defendant's property.
3. Further, individuals involved in animal rescue and animal breeding have had multiple opportunities to view and inspect the Defendant's property and they found no dangers to the dogs' welfare or safety or any other condition that might prove detrimental to the animal's health.
4. To the contrary, the Defense has multiple witnesses who are animal care professionals who could attest to his attention to the care and treatment of his animals.
5. That there have never been allegations that animals were denied adequate or wholesome food.
6. There have never been any allegations that the animals in the Defendant's care were deprived of water.

7. There have never been any allegations that the animals were denied protection from the elements.
 8. There have never been any allegations that the dogs were not provided an opportunity for exercise.
 9. There have never been any allegations that the animals were denied adequate veterinary care.
4. That four of the animals that were seized in the raid on the Defendant's property were puppies under the age of two months. As set out by ordinance 10-4-4(B)(3) – animals under the age of six months are not restricted and thus the seizure of these puppies is unlawful and contrary to the ordinance cited by the City of Littleton.

**COURT'S ORDER AUTHORIZING FORCIBLE SEIZURE IS WITHOUT
AUTHORITY UNDER THE LITTLETON MUNICIPAL CODE OR STATE OF
COLORADO NUISANCE ABATEMENT LAWS**

5. The only penalty authorized by the Littleton Municipal Code for violation of any Chapter 6 ordinance is a fine of not more than nine hundred and ninety nine dollars (\$999.00) (Ord. 18, Series of 1982) See Littleton Municipal Code 6-2-12 – Penalties for Violation.
6. The only exception to this is if there is a repeat allegation of roaming of a fierce or vicious animal – which has never been alleged in this case. In that case the remedy is a fine and potential jail time.

7. Under no circumstances does the Littleton Municipal Code or State of Colorado nuisance abatement provisions authorize forcible seizure of property.
8. Further, 6-2-12 mandates that a Defendant be given notice and a court appearance for any proposed violation.
 - a. In the instant case the Defendant was never given the opportunity to respond to allegations and in fact had a review hearing scheduled in future weeks to address any concerns raised by the city attorney or animal control personnel.
 - b. The action that occurred on February 15, 2008, did circumvent due process that is mandated by the Littleton Municipal Code, State of Colorado statute and common law and the Colorado and United States Constitutions.
9. Additionally, Littleton Municipal Code 1-4-1 General Penalty again authorizes the imposition of a fine, or up to one year of probation or up to one year of jail for violations of municipal ordinances without a specific penalty. However, in the instant case, the penalty is proscribed as a fine. Again, under no circumstances does the code authorize forcible seizure of property.
 - a. The Defendant cites that the city attorney has not acted in good faith in the past based on its request for jail time and a three year term of probation when in fact the Municipal Code establishes the potential penalty to be assessed which is up to one year of probation and no jail time authorized.

b. Additionally the Defendant questions the good faith of the city attorney and animal control personnel who effectuated this “emergency” seizure when all parties were aware from the Defendant that he had procured a residence and 37 acres of land in rural Adams County and that the dogs were to be moved to that facility within days of the raid. This fact certainly mitigates against any evidence tendered to the Court that would suggest some sort of imminent danger to the dogs based on being over the limit under the ordinance.

10. Setting aside penalties provided for Chapter 6 ordinance violations, even Littleton Municipal Code 10-4-4, regarding Limitation of Accessory Uses – has no provision whatsoever for seizure of properties. The Code authorizes the imposition of a fine and probation

COURT’S ORDER CLAIMS AUTHORITY FOR SEIZURE BASED ON CODE 6-1-3-(B) AND CLAIMS OF ENDANGERMENT TO ANIMALS HOWEVER NO RECENT ALLEGATIONS OF ENDANGERMENT EXIST TO SUPPORT THE COURT’S FINDINGS AND PREVIOUS ALLEGATIONS DEFY STANDARDS AND PRACTICES

11. The Court in its Order dated the 15th of February, 2008, indicates that it is exercising its authority under City of Littleton Code 6-1-3(B) – Cruelty to Animals. (“It shall be unlawful for the owner, possessor or keeper of any animal to negligently or intentionally deprive such animal of adequate and wholesome food and water, protection from the elements, opportunity for exercise, or adequate veterinary care, or otherwise neglect such animal in such a manner as to endanger its health or cause it to suffer. (Ord. 18, Series 1982))

However, 6-2-12 only authorizes the imposition of a fine for violation of the ordinance.

12. And, while the Court indicates that it received testimony and evidence as the basis for entering its Order, the Court failed to provide due process to the Defendant or an opportunity to respond and put on its own evidence before the Court resorted to drastic and unauthorized seizure of the Defendant's prize winning show dogs.
13. The Court failed to be fully advised in its premises as to the totality of circumstances and failed to afford the Defendant the due process of law.
14. The Court made a finding that there was a clear and present danger to the health of the animals, however, the only citation by animal control that there ever existed any unsanitary condition – namely an odor of urine -- occurred nearly a year prior on March 16, 2007.

COURT'S ORDER TO CHANGE PLACEMENT OF ANIMALS TO COLORADO HUMANE SOCIETY – AN ORGANIZATION UNDER INVESTIGATION BY THE COLORADO ATTORNEY GENERAL -- EXPONENTIALLY INCREASES THE LIKELYHOOD THAT ANIMALS WILL BE PLACED IN INHUMANE AND DANGEROUS CONDITIONS

15. Further, the Court's relief was to order the dogs seized and turned over to the Colorado Humane Society which is an organization that recently has been cited for its inhumane condition and treatment of animals. (See Denver Post – October 22, 2007 – Attorney General probing Colorado Humane Society – allegations of mismanagement and improper dumping of euthanized animals.)

16. As a result of this investigation numerous contracting agencies have terminated their relationship with Colorado Humane Society.
17. And, the Defendant asserts that there exists a questionable and possibly conflicting relationship between Colorado Humane Society and one of the animal control officers working for the City of Littleton who has been a principal complainant against the Defendant.
18. It is well known in the breeding and rescue communities that housing an animal in a shelter facility exposes an animal to the possibility of infection and disease.
19. The fact that four of the dogs seized were small puppies only exacerbates that potential for harm.
20. Most shelters and rescue organizations try to house puppies outside of the shelter environment for just that reason, placing small dogs and ill dogs in foster homes.
21. Additionally, one of the dogs seized had recently had surgery and as such is also especially susceptible to disease and infection.
22. The Defendant requests as relief that an immediate inspection of the animals occur and that a report be made to the Court about their current condition, housing arrangements, health and whether or not any of the animals health has deteriorated in the interim since the seizure..

SEIZURE WAS UNNECESSARILY FORCEFUL, USED EXCESSIVE CITY RESOURCES AND ENDANGERS THE DEFENDANT'S PROPERTY AND THE LIVES OF THE DOGS SEIZED.

23. It has been reported to the Defendant by neighbors that the force used by the City of Littleton to effectuate the seizure was unnecessary and endangered the lives of the dogs seized and placed the Defendant's residence and property at risk.
24. Neighbors photographed the raid and reported that four to six police cars and two animal control units were used to seize the dogs.
25. Both residence were forcibly breached, locks broken, and the residences were left unsecured after seizure – doors standing wide open.
26. Neighbors report that animal control officers lifted dogs out of windows and that the entire event was very upsetting to observe.
27. The value of the dogs seized runs into the many thousands of dollars as the dogs are show quality and prize winners.

FORCIBLE RAID UPON DEFENDANT'S PROPERTY NOT EVEN AUTHORIZED BY THE LAWS OF THE STATE OF COLORADO AS PROPER RELIEF TO ABATE A PUBLIC NUISANCE

28. Further, that the nature of the relief requested by the City of Littleton and authorized by the Court is unlawful based on the remedies available to abate a public nuisance under the laws of the State of Colorado.
29. The City of Littleton, by its animal control agents, asserted that the dogs in Defendant's property were being held under unsafe and unhealthy conditions.
30. However, as late as May of 2007, the Court and city attorney were apprised that an inspection by Keith Davis of the Denver Dumb Friends League of the Defendant's properties determined that there was no basis for a claim that

unsafe or unsanitary conditions existed. This report known to the Court and city directly rebuts the claims of the City of Littleton animal control officers.

31. Regardless, the nature of the violation at best would be a Class 3 nuisance as defined by Colorado Revised Statutes 16-13-305 – Activities Prohibited by Statute – which mandates that no forfeiture activity may take place until there is a conviction of a named offense. And, even then, the Defendant is afforded the opportunity for due process of law and an opportunity to be heard.
32. Littleton Municipal Code defines a nuisance as “Anything offensive or obnoxious to the health and welfare of the inhabitants of the City; or any act or thing repugnant to, or creating a hazard to, or having a detrimental effect on the property of another person or to the community.”
33. One of the allegations, namely the illegal operation of a kennel is deemed a public nuisance by the Littleton Municipal Code, 6-2-9. However, that same ordinance does not authorize seizure of properties as a relief for abatement of a violation of the ordinance. The Littleton Municipal Code only authorizes the Court to order injunctive relief, restraining order or a fine.
34. Specifically, Littleton Municipal Code 1-4-1 General Penalty – declares that the penalty for violation of the municipal code where no specific penalty is provided, is to be a fine of not more than \$1,000.00, or by imprisonment in jail not exceeding one year.

THE COURT, IN ALLOWING DRASTIC RELIEF, NEVER ATTEMPTED LESS INVASIVE ACTION TO ABATE THE NUISANCE

35. Further, it should be noted that only one citation was ever issued to the Defendant which forms the basis for the Court's extreme action. Rather than attempting to abate the nuisance through continued citations and fines, the Court by request of the city attorney, authorized the most extreme sort of intrusion into the Defendant's property and residence, seizing his financially valuable property – and more importantly, seizing his animals, whom he loved and cherished doing untold damage to the Defendant's own health and well being.

ANY INJUNCTIVE RELIEF OR OTHER RELIEF MUST BE BASED UPON A CONVICTION DULY OBTAINED UNDER DUE PROCESS OF LAW. DEFENDANT HAD NO CONVICTION AS HE WAS UNDER A DEFERRED JUDGMENT

36. The Defendant was offered and received a deferred judgment and as such has not been convicted of any wrongdoing. No conviction has entered and no court has entered findings that the deferred judgment offer to the Defendant has been revoked.

37. Defendant stands before the Court where he has not been convicted of any municipal offense.

38. Littleton Municipal Code 1-6-22 – Deferred Prosecution and Deferred Sentencing – provides for a deferred judgment for up to one year. In the instant case, the Defendant was ordered to complete three years of probation under a deferred judgment. And, although the Defendant was alleged to have violated his deferred judgment, the Court previously denied the City's request

to have his deferred judgment terminated on May 17, 2007, and continued the deferred judgment with orders that the Defendant become compliant.

39. Since that time, no further motions have been filed by the City to revoke the Defendant's deferred judgment and prosecution, thus to this date no entry of judgment has occurred against the Defendant.
40. In order for a Defendant to be found to be in violation of a deferred prosecution or judgment, the code mandates that a hearing be held before the municipal judge that granted the deferment and the burden is such hearing is upon the city attorney to show that a violation has occurred. The Defendant has not received any such hearing. Littleton Municipal Code 1-6-22.
41. People v. Simonds, 113 P.3d 762 (Colo. 2005), stands as authority that upon application by the prosecution for revocation of a **deferred judgment** based on breach of any of its conditions, the defendant is entitled to a hearing, at which the prosecution must prove the allegations by a preponderance of the evidence.
42. Further, People v. Skufca, 141 P.3d 876 (Colo. App. 12-1-05) establishes that no conviction may enter until such time as the Court has made a finding that a deferred judgment has been revoked and judgment entered.

THE APPROPRIATE REMEDY FOR CONTINUED VIOLATION OF AN ORDINANCE WOULD HAVE BEEN FOR THE CITY ATTORNEY TO SEEK TO HAVE THE DEFENDANT'S DEFERRED JUDGMENT REVOKED AND TO SEEK IMPOSITION OF A FINE.

43. City of Littleton code suggests that the proper relief if the city felt that the Defendant was in continued violation of his deferred judgment agreement was

to file a motion to revoke the deferred judgment wherein the Defendant could appear, be afforded due process and also to have representation if desired.

OR, THE CITY COULD HAVE SOUGHT INJUNCTIVE RELIEF IF IT COULD ESTABLISH NECESSITY

44. The city by and through its agents made no attempt at less drastic measures that were authorized by the code – namely repeat citations, revocation of the deferred judgment or fines.
45. Instead, the city sought relief that was not authorized by the municipal code and was so drastic in nature that it went beyond those enforcement options granted by the State of Colorado for abatement of a nuisance.

THE DEFENDANT ASSERTS THAT EVEN ON THEIR FACE, THE ALLEGATIONS OF THE DEFENDANT WOULD NOT MERIT INJUNCTIVE RELIEF UNDER THE LAW

46. That the Defendant asserts that the allegations of the city at best would not be sufficient to merit injunctive relief, but by holding a secretive emergency hearing where the Defendant was not present, it sidestepped the Colorado and United States Constitutions which stand for the proposition that there may be no taking of property without due process of law.
47. Colorado law has established that when considering a motion for a preliminary injunction, the trial court must find that the moving party has demonstrated (1) a reasonable probability of success on the merits; (2) a danger of real, immediate, and irreparable injury which may be prevented by

injunctive relief; (3) lack of a plain, speedy, and adequate remedy at law; (4) no disservice to the public interest; (5) balance of equities in favor of the injunction; and (6) preservation by the injunction of the status quo pending a trial on the merits. Rathke v. MacFarlane, 648 P.2d 648, 653-54 (Colo. 1982). If each criterion is not met, injunctive relief should not be granted. Id. at 654.

48. Clearly under the above standards the city would fail for injunctive relief under elements 2, 3, 4, 5, and 6.

BASED ON SECRET EMERGENCY HEARING BEFORE THE COURT, THE DEFENDANT IS NOT ABLE TO ASCERTAIN WHETHER THE COURT WAS MADE AWARE THAT THE DEFENDANT WAS WITHIN DAYS OF MOVING ALL OF HIS ANIMALS COMPLETELY OUT OF THE CITY OF LITTLETON TO A 37 ACRE PROPERTY IN RURAL ADAMS COUNTY THAT HAS NO LIMITATION RESTRICTIONS ON ANIMALS

49. The Defendant had advised animal control agents upon their inspection on the 14th day of February, 2008, one day before the raid, that he had procured another residence and a sizable amount of property in Adams County and that the dogs would be moved to that location in a day or two, after the conclusion of the dog show where the Defendant was showing his animals.

50. Animal Control agents, and by inference, the City of Littleton, were aware that alternative arrangements had been made that would bring the Defendant into compliance with his deferred judgment within a day or two of the raid.

51. And, animal control agents specifically knew that the Defendant was attending and showing dogs in the city of Denver and that he would be away from his property for some part of each day through Monday, February 18th.

52. It is alleged by the Defendant that the city exercised bad faith in demanding a forcible raid upon his property at this specific time and place when the city knew that the Defendant would not be present to allow entry, inspection or try to affect some sort of mediation or even accomplish immediate remove of the dogs to his new property and forego attending the dog show.
53. Further, the hasteful actions bring into question the possible conflict of interest that exists between one of the animal control agents and the Colorado Humane Society as a possible motive for the drastic actions requested and undertaken outside the authority of the municipal code, state law and constitutions.

FURTHER, CITY AGENTS KNEW THAT THE DEFENDANT WAS APPLYING FOR A PET ANIMAL CARE FACILITIES LICENSE TO OPERATE A KENNEL AT HIS NEW PROPERTY LOCATION

54. City of Littleton animal control agents had been told by the Defendant at the inspection the day before the raid, that his new property in Adams County had no limitation on number of dogs.
55. And, the agents were informed that the Defendant was applying for a kennel license under the Pet Animal Care Facilities Act (PACFA).
56. The Defendant asserts that the city and its agents acted in bad faith when seeking the relief they did knowing that there would be a resolution to the situation within a matter of days and that the Defendant was already boarding dogs in Adams County and had arranged for inspection of his property there by appropriate authorities.

WHEREFORE, based on the above the Defendant respectfully requests the following alternative relief.

- a. That an emergency hearing be scheduled forthwith to address the illegal seizure of the Defendant's property wherein the Defendant would be allowed to present expert and lay witness testimony and evidence; and
- b. That a special prosecutor be appointed to investigate possible bad faith on the part of the City of Littleton city attorney and animal control agents; and
- c. That an inspection of the animal holding facility – the Colorado Humane Society be allowed forthwith by a licensed veterinarian of the Defendant's choosing to ascertain the safety and health of the animals; and.
- d. That the four puppies seized be immediately relocated to a non-shelter facility and placed into foster care with a party of the Defendant's choosing or a foster home approved by the Denver Dumb Friends League; and
- e. That the animal who recently received emergency surgery be removed from the Colorado Humane Society and housed either at the treating veterinarian's facility or at a foster home approved by the Defendant or the Denver Dumb Friends League; and

- f. That the Colorado Humane Society be ordered forthwith not to attempt to place or alter the dogs in its custody; and
- g. That the remaining dogs seized be removed from the Colorado Humane Society and placed with a foster home of the Defendant's choosing or at a placement approved by the Denver Dumb Friends League pending resolution of this matter; and
- h. That the Defendant's property be returned to him forthwith in the same condition as when seized (unaltered); and
- i. That the Court assess punitive and real damages to the Defendant against the City of Littleton.
- j.

Respectfully submitted,

Susan M. Martin #33994

CERTIFICATE OF HAND DELIVERY

I certify that a true copy of the above was hand delivered to the City of Littleton city attorney and the Municipal Court Clerk on this 19th day of February, 2008.

Respectfully submitted,

Susan M. Martin #033994