

ORDINANCE NO. 9946

AN ORDINANCE AMENDING SECTION 11-1-210 OF
CHAPTER 1 OF TITLE XI OF THE PUEBLO MUNICIPAL
CODE TO INCLUDE NEW PROCEDURES FOR
ADDRESSING NUISANCE VEHICLES

WHEREAS, crimes involving vehicles pose a danger to the life and property of the residents of Pueblo; and

WHEREAS, the vehicles involved in these crimes are a nuisance and should be abated; and

WHEREAS, the procedures for abating nuisance vehicles should be uniform and easily applied; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that: (brackets indicate matter being deleted, underscoring indicates new matter being added)

SECTION 1.

Section 11-1-210 of the Pueblo Municipal Code shall be amended as follows:

Sec. 11-1-210. - Vehicles; nuisance; abatement; violation.

(a) Declaration. Crimes involving vehicles render City residents, visitors, businesses, and neighborhoods insecure in life and in the use of property. Such crimes and the instrumentalities used to commit such crimes constitute a continuing threat to the comfort, safety, and health of the public. It is expressly declared that the use of vehicles for the commission of nuisance vehicle offenses constitutes a public nuisance within the City that should be eliminated or hindered, and thereby abated, by the means set forth in this Section.

(b) Definitions. As used in this Section:

(1) *Chief of Police* means the Chief of the Pueblo Police Department or his or her authorized representative.

(2) *Innocent owner* means a record owner who neither participated in the commission of a nuisance vehicle offense, nor knew or reasonably should have known that the vehicle would be used in the commission of a nuisance vehicle offense.

a. There is a rebuttable presumption that the record owner knew or should have known the vehicle would be used in a nuisance vehicle offense, if the vehicle had previously been used within the City to commit, conduct, promote, facilitate, or aid in the commission of or flight from a nuisance vehicle offense.

(3) *Nuisance vehicle* means a vehicle which is used within the City to commit, conduct, promote, facilitate, or aid in the commission of or flight from a nuisance vehicle offense. Nuisance vehicle shall not include a vehicle with respect to which the record owner is an innocent owner.

(4) *Nuisance vehicle offense* means any of the following:

a. A drive-by-crime as defined in Section 16-13-301(2.2), C.R.S. (2020) as amended;

b. Vehicular eluding under Section 18-9-116.5, or eluding or attempting to elude a peace officer under Section 42-4-1413, C.R.S. (2020) as amended.

c. Speed contest as defined in Section 42-4-1105, C.R.S. (2020) as amended;

(5) *Record owner* means the owner with respect to a vehicle as identified in the records of application and registration maintained by the Colorado Department of Revenue or, if the vehicle is registered outside the State, the records of application and registration maintained by the state in which the vehicle is registered. If such record owner establishes that the **entire property interest in the nuisance** vehicle was transferred to a bona fide transferee before the occurrence of the related nuisance vehicle offense, the record owner shall mean and include said transferee.

(6) *Vehicle* means any self-propelled device which is capable of moving itself from place to place upon wheels, which is designed primarily for travel on the public highways and which is generally and commonly used to transport persons and property over the public highways.

(c) Failure to Charge. A vehicle nuisance offense does not require that the individual responsible for the offense be charged, prosecuted, or convicted of any violation of federal law, state law, or city code.

(d) Abatement.

(1) If the Chief of Police, **or their designee** finds and determines upon probable cause that a vehicle is a nuisance vehicle **and that the driver's continued use of the vehicle would cause a threat to public health, safety, and welfare;** **],** the Chief of Police **or their designee may immediately seize the vehicle at the time of the offense without prior notice to the Record Owner.**

(2) **Whenever the Chief of Police or their designee finds and determines upon probable cause that a vehicle is a nuisance vehicle, whether or not the vehicle is immediately seized, the Chief of Police or their designee shall** **[may]** serve written notice and order upon the record owner **without unreasonable delay**, which notice and order shall provide:

a. A description of the vehicle, including make, model and vehicle identification number.

b. A statement that the vehicle has been used in the commission of a nuisance vehicle offense and identification of the approximate date and location of said offense.

c. Notice that the vehicle has been determined to be a nuisance vehicle pursuant to this Section.

d. An order prohibiting the record owner from using or operating or permitting the use or operation of the nuisance vehicle for an abatement period not exceeding six (6) months other than such use or operation which is necessary to deliver possession of such vehicle to the Chief of Police.

e. An order directing the record owner to deliver immediate possession of the vehicle to the Chief of Police, unless such vehicle has otherwise been lawfully seized.

f. That violation of a final notice and order is a criminal offense subject to fine and/or jail sentence.

g. That the owner may appeal such notice and order as provided in this Section.

[(2)](3) The service required in subsection (2) of this section shall be by personal service or by certified mailing to the address of the record owner, as listed in the Colorado Department of Motor Vehicles, with return receipt requested. Service shall be considered completed upon personal service or at the time the certified mailing is sent.

(4) A courtesy copy of said notice and order shall be mailed by first-class mail, postage prepaid, to all lienholders of record.

[(3)](5) Appeals and stay of final notice and order.

a. The record owner of a nuisance vehicle may appeal a notice and order by filing written notice of such appeal with the Municipal Court Clerk within fourteen (14) days after service of the notice and order.

b. The timely filing of an appeal shall stay the notice and order until such time as a hearing may be held. Any notice and order which is not timely appealed shall be a final notice and order.

1. Nothing in this section shall prevent the Police Department from immediately seizing a nuisance vehicle upon issuance of a notice and order.

2. In the event the nuisance vehicle has already been seized prior to the filing of the appeal, the nuisance vehicle shall not be released during the pendency of the stay; unless the court determines that failure to release the vehicle will result in undue hardship. Undue hardship shall mean a hardship that poses a substantial and unjustifiable risk to the health, safety, and welfare of the record owner.

3. If the Hearing Officer finds the vehicle is not a nuisance vehicle and/or the Record Owner is an Innocent Owner, the Record Owner shall not be responsible for towing and storage fees resulting from the seizure of the vehicle. The record owner may be responsible for towing and storage fees if the vehicle was seized and retained for any other lawful reason.

4. The Police Department is not required to release a nuisance vehicle during the pendency of a stay if the vehicle has been seized and retained for any other lawful reason.

c. Hearing on appeal. The hearing officer, with respect to any appeal filed pursuant this Section, shall be the Municipal Court Judge. Such hearings shall be conducted as quasi-judicial hearings in accordance with the provisions of Title I of this Code.

1. Time and notice of hearing. A hearing shall be set within fourteen (14) days of filing the notice of appeal. Notice of the hearing date shall be served personally or by mailing the same by first-class mail, postage prepaid, to the record owner at his or her address set forth in the appeal.

2. Burden of proof. The City shall have the burden of proof by a preponderance of the evidence with respect to establishing that the vehicle is a nuisance vehicle. **If the Record Owner claims to be an Innocent Owner, the City shall have the burden of proof to prove by a preponderance of the evidence that the Record Owner is not an Innocent Owner.**

3. Decision on appeal. If the hearing officer determines that the vehicle is not a nuisance vehicle **and/or the Record Owner is an Innocent Owner**, the hearing officer shall reject and rescind the notice and order. If the hearing officer determines that the vehicle is a nuisance vehicle **and/or the Record Owner is not an Innocent Owner**, the hearing officer shall sustain the notice and order, this shall be a final order of the court. For the purposes of this Section and unless otherwise stayed by the District Court, the notice and order shall be final.

(e) Temporary Restraining Order. If **after the date of a nuisance vehicle offense** the Chief of Police **or their designee** determines that a vehicle must be seized without notice to the **[registered]Record O[o]wner** in order to preserve the **[comfort,**

safety, and]health, **safety, and welfare** of the public or of police officers; the Chief of Police may petition the Municipal Court for issuance of a temporary [protection]**restraining** order under this Section.

(1) If probable cause is established to believe that a vehicle is a nuisance vehicle under this Section, by means of a complaint supported by an affidavit or testimony evidence accepted at a hearing, the Municipal Court shall issue a temporary restraining order directing the Police Department to seize the nuisance vehicle without notice to the registered owner. Such temporary restraining order shall:

a. Direct a peace officer to seize and impound the nuisance vehicle for an abatement period not to exceed six (6) months;

b. Restrain and enjoin all persons from selling, transferring, encumbering, damaging, destroying, or using as security for a bond the nuisance vehicle;

c. Order the Police Department to provide a copy of the restraining order through personal service to the registered owner or through certified mailing to the last known address of the registered owner; and

d. Issue any other orders that are reasonably necessary to take the vehicle into the court's constructive custody, and to provide access to and safeguard that vehicle.

(2) Any person with an ownership interest adversely affected by a temporary restraining order issued pursuant to this Section may file a motion to modify or vacate the temporary restraining order by filing written notice with the Municipal Court within fourteen (14) days after the issuance of the **temporary restraining** order or the seizure of the vehicle, whichever is later.

a. The Municipal Court shall be the hearing officer on all motions to vacate or modify a temporary restraining order. Upon receipt of a motion to modify or vacate a temporary restraining order the Municipal Court shall schedule a hearing on the merits of the motion within fourteen (14) days.

b. Any motion to modify or vacate a temporary restraining order issued under this Section shall state specifically the factual and legal grounds upon which it is based, only those grounds may be considered at the hearing.

c. Burden of proof. At the hearing the City shall have the burden of proving by a preponderance of the evidence that the vehicle is a nuisance vehicle. **If the Record Owner claims to be an Innocent Owner, the City shall have the burden of proof to prove by a preponderance of the evidence that the Record Owner is not an Innocent Owner.**

d. The Municipal Court shall not modify or vacate a temporary restraining order unless it finds that [there is no probable cause to believe that] the vehicle is not a nuisance vehicle, or it is established that the [registered]Record owner is an innocent owner as defined in this Section.

e. The provisions of a temporary restraining order, issued under this Section, shall remain in effect unless amended by the Municipal Court.

f. Any order denying or granting a motion to vacate or modify a temporary restraining order issued under this Section shall be a final order of the hearing officer.

(f) Any vehicle which is the subject matter of a final notice and order or a temporary restraining order shall not be released to the record owner except upon the following conditions:

(1) Compliance with the terms of the notice and order or the restraining order and expiration of the abatement period set forth in the notice and order or restraining order; and

(2) Payment of all storage fees incurred by the City with respect to the vehicle. Such fees shall be commensurate with, but shall not exceed, the maximum rate that a towing carrier may charge for a nonconsensual tow of a motor vehicle as set forth in Rule 6511, 4 Code of Colorado Regulations 723-6 (2020), as amended.

(3) Any vehicle which remains unclaimed after the six-month period set forth in the notice and order may be sold by the City pursuant to the procedure set forth in Sections 1802 through 1814 of the Colorado 2020 Model Traffic Code as adopted by Chapter 1 of Title XV of this Code, for sale of abandoned and impounded vehicles. All unpaid storage fees owed pursuant to Subparagraph (2) above shall constitute a lien upon the vehicle and superior to all other liens of any nature.

(g) Judicial Review. Any final decision of the hearing officer may be appealed to the District Court pursuant to Section 1-7-14 of this Code. The hearing officer shall not stay the decision pending any such appeal.

(h) Violation. It shall be a Class 1 municipal offense for any person to:

(1) Fail to comply with a, properly served, final notice and order; or

(2) Fail to comply with any provision of a restraining order issued under this Section.

(i) Limitations.

(1) [No notice and order nor any temporary restraining order shall be served upon a record owner who does not reside within the City, unless such record owner participated in the nuisance vehicle offense.

(2)] This Section is not intended to authorize any act expressly prohibited by state law or to forbid any conduct expressly authorized by state law. The provisions of this Article shall be construed to avoid any such direct and express conflict.

SECTION 2.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance to implement the policies and procedures described herein.

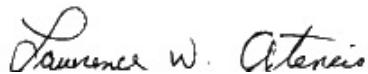
SECTION 3.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on May 24, 2021.

Final adoption of Ordinance by City Council on June 14, 2021.



President of City Council

Action by the Mayor:

☒ Approved on June 15, 2021.

☐ Disapproved on _____ based on the following objections:



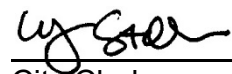
Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST



City Clerk