

ORDINANCE NO. 9774

AN ORDINANCE AMENDING SECTION 11-1-210 OF  
CHAPTER 1 OF TITLE XI OF THE PUEBLO MUNICIPAL  
CODE TO INCLUDE NEW DEFINITIONS AND  
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; 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[Drive-by crimes and speed contests] 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[drive-by crimes and speed contests] 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) [*Drive-by crime* shall have the meaning as set forth in Section 16-13-301(2.2), C.R.S. (2008), as amended.

(3)] *Innocent owner* means a record owner who neither participated in the commission of a nuisance vehicle offense[drive-by crime or speed contest], nor knew or reasonably should have known that the vehicle would be used in the commission of a nuisance vehicle offense[drive-by crime or speed contest].

**[(4)](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.***[for concealment or transportation in the commission of a drive-by crime, or a speed contest; provided, however, that n]***N***uisance 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 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 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 vehicle was transferred to a bona fide transferee before the occurrence of the related **nuisance vehicle offense***[drive-by crime or speed contest]*, the record owner shall mean and include said transferee.

(6) **[***Speed contest* means the operation of one (1) or more vehicles to conduct a race or a time trial, including but not limited to rapid acceleration, exceeding reasonable and prudent speeds for streets, highways and existing traffic conditions, vying for position, rapid swerving or weaving in and out of traffic, or performing one (1) or more lane changes in an attempt to gain advantage over one (1) or more of the other race participants.

(7) **]** *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 finds and determines upon probable cause that a vehicle is a nuisance vehicle, the Chief of Police **[shall]****may** serve written notice and order upon the record owner, which notice and order shall provide:

**[(1)]a.** A description of the vehicle, including make, model and vehicle identification number.

**[(2)]b.** A statement that the vehicle has been used in the commission of a **nuisance vehicle offense****[drive by crime or speed contest]** and identification of the approximate date and location of said **offense****[crime]**.

**[(3)]c.** Notice that the vehicle has been determined to be a nuisance vehicle pursuant to this Section.

**[(4)]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 **[of]****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.

**[(5)]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.

**[(6)]f.** That violation of a final notice and order is a criminal offense subject to fine and/or jail sentence.

**[(7)]g.** That the owner may appeal such notice and order as provided in this Section.

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

**[(d)](3)** Appeals**[;]** **and** stay**[; release of vehicle]****of final notice and order.**

**[(1)]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)****[ten (10)]** days after service of the notice and order.

**[(2)]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.

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

a. Compliance with the notice and order and expiration of the six-month period set forth in the notice and order; and

b. 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 (2008), as amended.

c. 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 Paragraph 15-1-8(a)(25) of this Code, for sale of abandoned and impounded vehicles. All unpaid storage fees owed pursuant to Subparagraph b. above shall constitute a lien upon the vehicle and superior to all other liens of any nature.]

[(e)]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)]1. Time and notice of hearing. A hearing shall be set within **fourteen (14)** [ten (10) business] 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)]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.

[(3)]3. Decision on appeal. If the hearing officer determines that the vehicle is not a nuisance vehicle, the hearing officer shall reject and rescind the notice and order. If the hearing officer determines that the vehicle is a nuisance vehicle, the hearing officer shall sustain the notice and order, **this shall be a final order of the court.** [and, f]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 the Chief of Police determines that a vehicle must be seized without notice to the registered owner in order to preserve the comfort, safety, and health of the public or of police officers; the Chief of Police may petition the Municipal Court for issuance of a temporary protection 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 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.

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 a nuisance vehicle, or it is established that the registered 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 notice and order and expiration of the abatement period set forth in the notice and 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 abatement period set forth in the notice and order, or the expiration of the temporary restraining order, may be sold by the City pursuant to the procedure set forth in Paragraph 15-1-8(a)(25) 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.

[(f)](g) Judicial review. Any final~~[The]~~ 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.

[(g)](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.

[(h)](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**[drive-by crime].

(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 and directed to perform any and all acts consistent with this Ordinance to effectuate 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.

*THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE TO FOLLOW*

**Action by City Council:**

Introduced and initial adoption of Ordinance by City Council on August 10, 2020.

Final adoption of Ordinance by City Council on August 24, 2020.


  
\_\_\_\_\_  
President of City Council

**Action by the Mayor:**

☒ Approved on August 28, 2020.

☐ Disapproved on \_\_\_\_\_ based on the following objections:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
Mayor

**Action by City Council After Disapproval by the Mayor:**

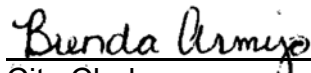
☐ Council did not act to override the Mayor's veto.

☐ 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