SPONSORED BY: MAYOR LEIGHTY

COUNCIL MEMBER'S RESOLUTION

NO. CB-1987
Series of 2022

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

A PUBLIC HEARING WILL BE HELD ON CB-1987, SERIES OF 2022, ENTITLED "A BILL FOR AN ORDINANCE AMENDING THE NORTHGLENN MUNICIPAL CODE BY THE ADDITION THERETO OF A NEW ARTICLE 10 OF CHAPTER 7 ENTITLED VEHICULAR PUBLIC NUISANCES PERTAINING TO CIVIL ABATEMENT OF VEHICULAR PUBLIC NUISANCES" ON JULY 11, 2022 AT 7:00 P.M. AT CITY HALL COUNCIL CHAMBERS, 11701 COMMUNITY CENTER DRIVE, NORTHGLENN.

DATED this 27th day of June, 2022.

Meredith Leighty
MEREDITH LEIGHTY
Mayor

ATTEST:

Johanna Small
JOHANNA SMALL, CMC
City Clerk

AFFIDAVIT OF POSTING:

I, Johanna Small, certify that CB-1987 was posted at the authorized posting places in the City of Northglenn this 28th day of June, 2022.

Johanna Small
City Clerk's Office

SPONSORED BY: MAYOR LEIGHTY

COUNCIL MEMBER'S BILL | ORDINANCE NO.

No. CB-1987
Series of 2022

Series of 2022

A BILL FOR AN ORDINANCE AMENDING THE NORTHGLENN MUNICIPAL CODE BY THE ADDITION THERETO OF A NEW ARTICLE 10 OF CHAPTER 7 ENTITLED VEHICULAR PUBLIC NUISANCES PERTAINING TO CIVIL ABATEMENT OF VEHICULAR PUBLIC NUISANCES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Northglenn Municipal Code is amended by the addition thereto of a new Article 10 of Chapter 7 entitled "Vehicular Public Nuisances" to read as follows:

ARTICLE 10
VEHICULAR PUBLIC NUISANCES

**7-10-1**. Policy.

(a) City Council hereby finds and determines that the abatement of vehicular public nuisances for the protection of public health, safety and welfare is a matter of local concern. The purpose of this article is not to punish, but to remedy vehicular public nuisances. The remedies provided in this Article are directed at the property involved without regard to ownership, title or right of possession and, unless otherwise provided, without regard to the culpability or innocence of those who hold these rights.

(b) The vehicular public nuisances and the provisions of this Article are entirely strict liability in nature. Unless otherwise provided, no culpability or mens rea of any type or degree shall be required for any of the public nuisances, actions, temporary restraining orders or remedies under the provisions of this Article.

**7-10-2**. Definitions. The following terms as used in this Article 10 shall have the following meanings:

(a) "**Abate**" shall mean to bring to a halt, eliminate or where that is not possible or feasible, to suppress, reduce, and minimize.

(b) "**Burnout**" (also known as a "**peel out**" or a "**power brake**") shall mean when a driver intentionally keeps a vehicle stationary by applying the brakes while simultaneously applying the gas pedal. As a result, the wheels spin and smoke can be generated from the wheels due to the friction from the roadway and can significantly impede visibility on the roadway.

(c) "**Close**" or "**to close**" or "**closure**" shall mean to exercise control over the motor vehicle and remove all owners, occupants and other persons from the motor vehicle and to impound, lock, secure, and otherwise close and prohibit all entry, access, and use of the motor vehicle, except access and use as may be specifically ordered by the court for purposes of inventory, maintenance, storage, security and other purposes, and to vest the sole right of possession and control of the motor vehicle, in the City of Northglenn for a limited period of time defined by court order.

(d) "**Donut**" or "**donuts**" shall mean a maneuver performed while driving a motor vehicle in a manner that rotates the rear or front of the vehicle around the opposite set of wheels in a continuous motion. This can create a circular skid-mark pattern of rubber on a roadway and possibly even causing the tires to emit smoke.

(e) "**Drifting**" shall mean a driving technique performed while driving a motor vehicle where the driver intentionally oversteers, with loss of traction, while maintaining control and driving the car through the entirety of a corner causing the rear slip angle to exceed the front slip angle to such an extent that often the front wheels are pointing in the opposite direction to the turn (e.g., car is turning left, wheels are pointed right or vice versa, also known as opposite lock or counter-steering).

(f) "**Illegal street racing**" shall mean any criminal or traffic violation of federal law, state law, the Northglenn Municipal Code, or the Model Traffic Code as adopted by the City of Northglenn committed by any person or persons, individually or acting jointly through a conspiracy, in complicity, or accessory after the fact where the person(s) operate(s) a motor vehicle in an unsanctioned and illegal form of auto racing, burnouts, donuts, drifting, exhibition of speed, power sliding, or similar driving maneuver performed on either a public or private road or on public or private property.

(g) "**Legal or equitable interest or right of possession**" shall mean every legal and equitable interest, title, estate, tenancy and right of possession recognized by law and equity, including any right or obligation to manage or act as agent or trustee for any person holding any interest or right.

(h) "**Motor vehicle**" shall mean any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways or a low-speed electric vehicle; except that the term does not include electrical assisted bicycles, electric scooters, low-power scooters, wheelchairs, or vehicles moved solely by human power.

(i) "**Person**" shall mean natural persons and every legal entity whatsoever, including, but not limited to, corporations, limited liability companies, partnerships, limited partnerships and associations.

(j) "**Power slide**" shall mean driving a vehicle with a throttle-on induced oversteer initiating a drift by applying the throttle in a turn enough to make the rear wheels break traction and slide out.

(k) "**Vehicular public nuisance**" shall mean any motor vehicle used to commit, conduct, promote, facilitate or aid the commission of illegal activity. For purposes of this section the illegal activity shall have the same definition as that contained in the pertinent section[s] of the Colorado Revised Statutes [C.R.S.], as amended, or the pertinent section[s] of the Northglenn Municipal Code, as amended. Evidence of the existence of a vehicular public nuisance shall include evidence that the motor vehicle was used in one (1) or more of the following illegal activities:

(1) Careless driving as prohibited in the Model Traffic Code as adopted by Article 1 of Chapter 7 of the Northglenn Municipal Code, or C.R.S. § 42-4-1402;

(2) Eluding or attempting to elude a police officer as prohibited in the Model Traffic Code as adopted by Article 1 of Chapter 7 of the Northglenn Municipal Code, or C.R.S. § 42-4-1413;

(3) Vehicular eluding as prohibited in C.R.S. § 18-9-116.5;

(4) Criminal mischief as prohibited in Section 9-2-1 of the Northglenn Municipal Code, or C.R.S. § 18-4-501;

(5) Minimum speed regulations as prohibited in the Model Traffic Code as adopted by Article 1 of Chapter 7 of the Northglenn Municipal Code, or C.R.S. § 42-4-1103;

(6) Obstructing highways or other passageways as prohibited in C.R.S. § 18-9-107;

(7) Reckless driving as prohibited in the Model Traffic Code as adopted by Article 1 of Chapter 7 of the Northglenn Municipal Code, or C.R.S. § 42-4-1401;

(8) Reckless endangerment as prohibited in Section 9-4-7 of the Northglenn Municipal Code;

(9) Speed contests—speed exhibitions—aiding and facilitating as prohibited in the Model Traffic Code as adopted by Article 1 of Chapter 7 of the Northglenn Municipal Code, or C.R.S. § 42-4-1105;

(10) Street racing; and

(11) Trespassing as prohibited in Section 9-2-2 of the Northglenn Municipal Code.

**7-10-3**. Procedure in General.

(a) Remedies cumulative and supplementary. The remedies provided in this Article are cumulative and supplementary to any other criminal or traffic ordinance, or statute, other civil remedies, and any administrative proceedings to revoke, suspend, fine or take other action against any license. The City may pursue the remedies provided in this Article, criminal penalties provided by other ordinances or statutes, other civil actions or remedies, administrative proceedings against a license or any one or more of these and may do so simultaneously or in succession.

(b) No delay in civil action. In the event that the City pursues both criminal or traffic remedies provided in any other section, other civil remedies or the remedies of any administrative action and the remedies of this Article, the civil action provided in this Article shall not be delayed or held in abeyance pending the outcome of any proceedings in the other criminal, traffic, civil or administrative action, or any action filed by any other person, unless all parties to the action under this Article so stipulate.

(c) Principles. All actions under this article shall be civil and remedial in nature. All issues of fact and law shall be tried to the court without a jury. All closure, receivership and destruction remedies under this Article shall be in rem. Injunctive remedies under this Article may be partly in personam. The burden of proof in all proceedings under this Article, including proof of the underlying criminal activity forming the basis of a vehicular public nuisance, shall be by a preponderance of the evidence, unless a different burden of proof is specified.

(d) Jurisdiction, duties and power. Pursuant to Colorado Constitution art. XX, § 6, Section 6.11 of the City of Northglenn Home Rule Charter, and Northglenn Municipal Code Section 8-1-2, the Municipal Court for the City of Northglenn is hereby vested with the jurisdiction, duties, and powers for this Article.

(e) Governance of proceedings. Proceedings under this Article shall be governed by the Colorado Rules of Civil Procedure ("CRCP") unless this Article provides a more specific rule. Vehicular public nuisance actions shall be included in the category of "expedited proceedings" specified in CRCP rules 16 and 26. Where this Article or the CRCP fail to state a rule of decision, the court shall first look to the Public Nuisance Abatement Act, C.R.S. § 16-13-301 *et seq*., and the cases decided thereunder.

(f) Discovery and inspection.

(1) *By defendant*. Upon the motion of a defendant or upon the court's own motion at any time after the filing of the complaint or summons and complaint the court may order the prosecution to permit the defendant to inspect and copy or photograph any books, papers, documents, photographs, or tangible objects that are within the prosecution's possession and control, upon a showing that the items sought may be material to the preparation of the defense and that the request is reasonable. The order shall

specify the time, place, and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just.

(2) *Witness's statements*. At any time after the filing of the complaint or summons and complaint, upon the request of a defendant or upon the order of court, the prosecution shall disclose to the defendant the names and addresses of persons whom the prosecution intends to call as witnesses at the hearing or trial, together with any witness statements.

(3) *Irrelevant matters*. If the prosecution claims that any material or statement ordered to be produced under this rule contains matter which does not relate to the subject matter of the witness's testimony, the court shall order it to deliver the statement for the court's inspection in chambers. Upon such delivery the court shall excise the portions of the statement which do not relate to the subject matter of the witness's testimony, then the court shall direct delivery of the statement to the defendant.

(4) *Statement defined*. The term "statement" as used in subsection (f)(2) and (f)(3) of this section in relation to any witness who may be called by the prosecution means:

(A) A written statement made by such witness and signed or otherwise adopted or approved by the witness;

(B) A mechanical, electrical, or other recording, or a transcription thereof, which is a recital of an oral statement made by such witness; or

(C) Stenographic or written statements or notes which are in substance recitals of an oral statement made by such witness and which were reduced to writing contemporaneously with the making of such oral statement.

(g) Filing. Actions under this Article shall be in writing and filed by the City Attorney for the City of Northglenn, or the City Attorney's designee.

(h) Complaint. An action under this Article shall be commenced by the filing of a written verified complaint or a written complaint verified by an affidavit and a motion for temporary restraining order.

(i) Parties defendant to action. The parties defendant to the action and the persons liable for the remedies in this Article include the motor vehicle itself, any person owning or claiming any legal or equitable interest or right of possession in the motor vehicle, all managers and agents for any person claiming a legal or equitable interest in the motor vehicle and any other person whose involvement may be necessary to abate the nuisance, prevent it from recurring or enforce the

court's orders. None of these parties shall be deemed necessary or indispensable parties.

(j) Personal service. Service of the summons, complaint, and temporary restraining order upon the owners or lienors of a motor vehicle may be served by any peace officer or any party who is not a party and who is not less than eighteen (18) years of age. Service of the summons, complaint, and temporary restraining order may be made by delivering a copy thereof to the person named. Service is also valid if the person named has signed a written admission or waiver of personal service.

(k) The issuance of a temporary restraining order, entry of written stipulations and voluntary abatement agreements, entry of default judgments and other uncontested matters pursuant to this Article shall be ruled on by the Court based upon the written pleadings and without the appearance of the parties.

**7-10-4**. Commencement of Public Nuisance Actions; Prior Notification.

(a) Notification before filing civil action sunder this Article. At least twenty-one (21) calendar days before filing a civil action under this Article, written notice shall be served upon the owners and lienors of a motor vehicle by personal service.

(b) The notice shall describe the nature of the alleged vehicular public nuisance, shall identify to the extent possible the person(s) actively involved in the vehicular public nuisance and identify the specific motor vehicle involved. The notice shall further advise the recipient that an action under this Article may be filed unless the recipient enters into a voluntary abatement agreement with the City pursuant to Section 7-10-12 of the Northglenn Municipal Code within 21 days of service of the notice.

(c) Reasonable assistance. The Northglenn Police Department shall provide reasonable assistance in any effort to voluntarily abate the vehicular public nuisance.

**7-10-5**. Temporary Restraining Orders.

(a) Continuous effect. Ex parte temporary restraining orders shall remain continuously in effect unless modified by court order as provided in Section 7-10-6 of the Northglenn Municipal Code, by stipulation of the parties or after trial on the merits.

(b) No security or bond. No security or bond of any type shall be required of the City in obtaining any temporary restraining order under this Article.

(c) Form and scope. Every temporary restraining order shall set forth the reason for its issuance, be reasonably specific in its terms and describe in reasonable detail the acts and conditions authorized, required or prohibited, and shall be

binding upon the property, the parties to the action, their attorneys, agents and employees and any other person who receives actual notice of the order.

(d) Generally. The court shall issue an ex parte temporary restraining order if the written complaint, supported by an affidavit, shows by a preponderance of the evidence that there is probable cause to believe that the specified motor vehicle was used to commit, conduct, promote, facilitate or aid the commission of any vehicular public nuisance.

(e) Detention and closure of motor vehicle(s). The temporary restraining order shall make the following orders for the detention and closure of motor vehicles and restrained persons as to motor vehicles:

(1) The Northglenn Police Department shall be ordered to detain and close the motor vehicle(s) using any reasonable force necessary, and to place the same in police custody in the constructive custody of the court, until further order of the court.

(2) All named defendants shall be ordered to deposit with the Northglenn Police Department all documents evidencing ownership, title, registration, keys and other devices for either access or operation of the motor vehicle(s).

(3) The Northglenn Police Department shall personally serve copies of the summons, complaint, and temporary restraining order upon any person who reasonably appears or claims to hold a legal or equitable interest or right of possession in the motor vehicle at the time of detention or closure.

(4) All persons shall be restrained from removing, concealing, damaging, destroying, or selling, giving away, encumbering or transferring any interest in the motor vehicle, or using the motor vehicle as security for a bond.

(5) Persons holding any legal or equitable interest or right of possession in the motor vehicle shall be ordered to take all reasonable steps to abate the vehicular public nuisance and prevent it from recurring.

(6) Any other orders that may be reasonably necessary to take the motor vehicle into the court's constructive custody, and to provide access to and safeguard the motor vehicle.

(f) Service. The summons, complaint, and temporary restraining order shall be served as provided by Section 7-10-3(j) of the Northglenn Municipal Code.

(g) These orders shall become effective fourteen (14) days after the date the temporary restraining order is served unless within that fourteen (14) day period a person claiming a legal or equitable interest or right of possession in the motor vehicle, files, sets, serves and has heard a motion to vacate or modify the temporary

restraining order(s) as provided in Section 7-10-6(c) of the Northglenn Municipal Code, or unless within that fourteen (14) day period a person claiming a legal or equitable interest or right of possession in the motor vehicle files, sets, serves and has heard a motion to stay execution of a temporary restraining order as provided in Section 7-10-6(e) of the Northglenn Municipal Code. The motion shall be heard and determined as provided in Section 7-10-6, subsections (c) and (e) of the Northglenn Municipal Code. A motion properly brought under Section 7-10-6, subsections (c) and (e) of the Northglenn Municipal Code shall temporarily stay a temporary restraining order until the conclusion of the hearing. No temporary restraining order shall permit the detention or closure of a motor vehicle until this fourteen (14) day period has elapsed.

**7-10-6**. Motion to Vacate or Modify Temporary Restraining Order.

(a) General. Any party defendant and any person holding any legal or equitable interest or right of possession in any motor vehicle detained or closed under this Article may file a motion to vacate or modify the temporary restraining order or for return of the motor vehicle. Proceedings on these motions shall be as provided below.

(b) Motion to vacate or modify orders other than those pertaining to detained or closed motor vehicles. Where the specific provision in the temporary restraining order complained of pertains to any matter other than a motor vehicle that has been detained or closed, the provision of this subsection shall apply and control.

(1) Within 14 days of the date that the temporary restraining order is served, the moving party must:

(A) File the written motion to vacate or modify;

(B) Set the motion for a hearing to be held within twenty-one (21) days but not less than 14 days from the date the motion is filed; and

(C) Personally serve the motion and notice of the hearing on the City Attorney for the City of Northglenn. Any motion to vacate a temporary restraining order shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing.

(2) At the hearing, the City shall have the burden of proving by a preponderance of the evidence that there is probable cause to believe that a vehicular public nuisance or vehicular public nuisance activity occurred on, in or about the motor vehicle, or the motor vehicle was used to commit, conduct, promote, facilitate or aid the commission of any vehicular public nuisance. The court shall not vacate or modify the temporary restraining order unless it finds that there is no probable cause to believe that a vehicular public nuisance occurred.

(c) Motion to vacate or modify orders pertaining to detained or closed motor vehicle(s). Where a specific provision in the temporary restraining order pertains to the retention, closure or receivership of property, the provisions of this subsection shall apply and control.

(1) Within 14 days of the date that the temporary restraining order is executed, the moving party must:

(A) File the written motion;

(B) Set the motion for a hearing to be held within twenty-one (21) days but not less than fourteen (14) days from the date of the filing of the motion; and

(C) Personally serve the motion and notice of the hearing on the City Attorney for the City of Northglenn. Any motion for return of closed property shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing.

(2) At the hearing on the motion for return or release of a detained or closed motor vehicle, the party seeking release and return of the motor vehicle shall first have the burden of proving ownership or a right to possession and that the motor vehicle is not relevant evidence in any criminal or traffic proceeding. The party seeking release of the property shall also have the burden of proving that there is no probable cause to believe that a vehicular public nuisance occurred on, in or about the motor vehicle or that an affirmative defense under Section 7-10-9 of the Northglenn Municipal Code exists.

(3) The court shall not return or release the motor vehicle to the moving party unless it finds by a preponderance of the evidence that:

(A) The moving party is the owner of the property or presently entitled to possession;

(B) The property is not relevant evidence in a criminal or traffic proceeding; and

(C) There is no probable cause to believe that a vehicular public nuisance was committed on, in or about the motor vehicle or that an affirmative defense under Section 7-10-9 of the Northglenn Municipal Code exists.

(d) Consolidated hearing on motion to vacate, modify, and trial on the merits. Where all parties so stipulate, the court may order the trial on the merits to be consolidated and tried with a hearing on these motions. Where the trial on the

merits is not consolidated, any evidence received at the hearing on these motions need not be repeated at trial but shall be treated as part of the record at trial.

(e) Order to stay execution of temporary restraining order. In addition to a motion to vacate or modify orders pursuant to subsection (b) and (c) of this Section, a defendant may file a written motion for stay of execution of a temporary restraining order. Whenever a motion for stay of execution is filed, the provisions of this subsection shall apply and control.

(1) Within fourteen (14) days of the date that the temporary restraining order is served, the moving party must:

(A) File a written motion to stay enforcement of the temporary restraining order;

(B) Set the motion for a hearing to be held within twenty-one (21) days but not less than 14 days from the date of the filing of the motion; and

(C) Personally serve the motion and notice of the hearing on the City of Attorney for the City of Northglenn.

(2) At the hearing, the moving party shall have the burden of proving by a preponderance of the evidence that the defendant is using all reasonable efforts to abate the vehicular nuisance activities, and that those efforts are likely to abate the vehicular nuisance activities.

(3) If the court finds:

(A) The defendant is using all reasonable efforts to abate the nuisance activities;

(B) These efforts are likely to abate the activities giving rise to the public nuisance; and

(C) The public health, safety and welfare would not be impaired by granting a stay of execution of the temporary restraining order, the court may grant a stay of execution of the temporary restraining order not to exceed 45 days except where a longer period of time is required by law.

(4) Any order granting a stay of execution of the temporary restraining order pursuant to subsection (e)(3) of this section shall be reviewed by the court at least seven days prior to expiration of the stay.

**7-10-7**. Remedies for Vehicular Public Nuisances.

Where the existence of a public nuisance is established in a civil action under this Article by a preponderance of the evidence, the court shall enter permanent prohibitory and mandatory injunctions requiring the parties defendant to abate the public nuisance and take specific steps to prevent the same and other public nuisances from occurring. The court shall also order the following remedies:

(a) Detention and Closure of Motor Vehicle: That the motor vehicle be detained and closed by impoundment of a period of not less than thirty (30) days and not more than one (1) year from the date of the final judgment, plus any extension of that period caused by a failure to comply with the reasonably necessary conditions for release of the motor vehicle. The issuance and execution of the closure order shall not be deemed a bailment of property.

(b) At the end of the closure period, the motor vehicle shall be released to the owner only upon:

(1) Payment of all towing fees, storage fees and all actual expenses incurred by the City and payment of all civil judgments under Section 7-10-8 of the Northglenn Municipal Code; and

(2) Execution by the owners and lienors of a complete and unconditional release of the City and all of its employees and agents for the closure and any and all damages to said vehicle.

(c) Upon a showing of good cause the court may reduce the impoundment and storage fees owed pursuant to subsection (b) of this section, but in no event shall the storage fees be reduced to amount lower than the fair market value of the vehicle.

(1) For the purposes of this subsection (c), "good cause" may be established by a preponderance of the evidence that the storage fees exceed the fair market value of the vehicle.

(2) The court must make written findings of fact and conclusions of law that the moving party has established, by a preponderance of the evidence that good cause exists to support any decision to reduce the amount of impoundment and storage fees owed.

(d) In the event that the owners and lienors, or any of them, fail, neglect or refuse to pay the fees, expenses, and judgments, within sixty (60) days of receiving notice of the final judgment of the court, the motor vehicle shall be declared to be abandoned and shall be disposed of in compliance with the Northglenn Municipal Code.

(e) At any time after the commencement of an action pursuant to this Article the City, through the City Attorney or the City Attorney's designee, and any party

defendant to an action under this Article may, in writing, voluntarily stipulate to orders and remedies that are different from and may be less stringent than the remedies provided in this part. The voluntary abatement agreement entered pursuant to this Article is designed to voluntarily abate the vehicular public nuisance activity occurring and provide reasonable measures to prevent vehicular public nuisance activities from recurring. The voluntary abatement agreement shall address all vehicular public nuisance activity occurring at the time of its execution.

(f) The court shall make the written stipulations and voluntary abatement agreements an order of the court and enforce the same. The remedies provided in this Article shall be applicable in the event of noncompliance with the voluntary abatement agreement.

**7-10-8**. Civil Judgment.

(a) Judgement for Costs: In any case in which a vehicular public nuisance is established, in addition to the remedies provided above, the court shall impose a separate civil judgment on every person who committed, conducted, promoted, facilitated or aided the commission of any vehicular public nuisance or who held any legal or equitable interest or right of possession in any motor vehicle used in the vehicular public nuisance activity. This civil judgment shall be for the purpose of compensating the City for the costs of pursuing the remedies under this Article.

(b) The civil judgment shall be in the liquidated sum of five hundred dollars ($500.00) and shall be imposed as a judgment against each defendant independently, separately and severally.

(c) In the event that the owners and lienors of a subject motor vehicle, or any of them, fail to file responsive pleadings within twenty-eight (28) days from when the temporary restraining order is mailed, and set the matter for hearing or trial on the merits, the court shall enter a default judgment and an order deeming the vehicle abandoned. In the event a default judgment and order of abandonment are entered, the civil judgment provided in subsection (b) of this section shall not be imposed and the vehicle shall be disposed of pursuant to the provisions of this Section 7-3-8 of the Northglenn Municipal Code.

**7-10-9**. Affirmative Defenses.

(a) It shall be an affirmative defense to an action brought pursuant to this Article that the owner of the motor vehicle was not involved in the public nuisance or public nuisance activity and that the owner did not know and was not willfully unaware towards the vehicular public nuisance or vehicular public nuisance activity.

(b) It shall be an affirmative defense to an action brought pursuant to this Article that the owner has acted diligently and with good faith to correct the nuisance. In addition to any other facts the court considers relevant, the court shall

consider the following in determining whether the owner has acted diligently and with good faith:

(1) Whether the owner has taken all reasonable steps to abate the vehicular public nuisance activity and restrain and prevent future nuisance activity;

(2) Whether the steps taken by the owner have been effective, the nuisance no longer exists, and recurrence of the nuisance activity does not appear likely; and

(3) Whether the owner or any agent, employee or assign was involved in activity which created or encouraged the vehicular public nuisance condition.

**7-10-10**. Supplementary Remedies for Vehicular Public Nuisances.

In any action in which probable cause for the existence of a vehicular public nuisance is established, in the event that the parties defendant, or any one of them, fails, neglects, or refuses to comply with the court's temporary restraining orders, closure and other orders, the court may, upon the written motion of the City, in addition to or in the alternative to the remedy of contempt, permit the City to enter, detain and abate by impoundment the vehicular public nuisance or perform other acts required of the defendants in the court's temporary restraining orders and other orders.

**7-10-11**. Other Seizures, Closures, Forfeitures, Confiscations and Remedies.

Nothing in this Article shall be construed to limit or forbid the seizure, confiscation, closure, destruction, forfeiture of property or use of other remedies, now or later required, authorized or permitted by any other provision of law. Nothing in this Article shall be construed as requiring that evidence and property seized, confiscated, closed, forfeited or destroyed under other provisions of law be subjected to the special remedies and procedures provided in this Article.

**7-10-12**. Limitation on Action.

Actions under this Article shall be filed no later than one year after the vehicular public nuisance or the last in a series of acts constituting the vehicular public nuisance occurs. This limitation shall not be construed to limit the introduction of evidence of vehicular public nuisances that occurred more than one year before the filing of the complaint when relevant for any purpose.

**7-10-13**. Severability.

In the event that any provision of this Article is declared to be unconstitutional or invalid for any reason, the remaining provisions shall be upheld and enforced unless the remaining provisions would create an unreasonable or unjust result.

INTRODUCED, READ AND ORDERED POSTED this 27th day of June, 2022.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

PASSED ON SECOND AND FINAL READING this ____ day of _____, 2022.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney