

POLICE MEMORANDUM

#17-2023

DATE: Sept. 25, 2023

TO: Honorable Mayor Meredith Leighty and City Council Members

THROUGH: Heather Geyer, City Manager *hmg*
Jason Loveland, Interim Deputy City Manager *AL2*

FROM: James S. May, Jr., Chief of Police *JSM/217*
Randall L. Darlin, Deputy Chief of Police

SUBJECT: CB-2011 – Vehicular Public Nuisances Ordinance Amendment

PURPOSE

To consider CB-2011, an ordinance on first reading that would amend Article 10 of Chapter 7 of the Municipal Code, entitled Vehicular Public Nuisances.

BACKGROUND

In 2022, Council adopted the Vehicular Public Nuisances Ordinance, providing the City with the necessary tools to combat serious public safety concerns involving motor vehicle use within the community. The Vehicular Public Nuisances Ordinance provides remedies related to street racing speed contests, dangerous vehicle maneuvers such as burnouts, donuts, and drifting, as well as concerns of individuals eluding police officers when stopped for traffic or other violations.

These activities put the lives and safety of the public at significant risk. They often occur on public roadways in complete disregard for the safety of others. The local ordinance offers abatement measures for specific conduct prohibited by municipal, State, or Federal statutes and provides the tools necessary to seek remedies against the property used to create the public nuisance.

The ordinance identifies vehicular public nuisances and creates a civil process to abate the nuisances. The abatement measures are adjudicated through the Municipal Court and authorize the Court to issue a temporary restraining order directing the Police Department to detain and close the motor vehicle if, by a preponderance of the evidence, the City establishes that there is probable cause to believe that a specified motor vehicle was used to commit, conduct, promote, facilitate, or aid the commission of any vehicular public nuisance. To “close” a motor vehicle means to exercise control over the vehicle, remove all owners and occupants, and impound, lock, secure, and otherwise prohibit all entry, access, and use of the vehicle for a period of time defined by court order.” Nothing in the ordinance prohibits the Municipal Court from ordering other less stringent remedies than the closure of the motor vehicle.

The proposed changes establish less restrictive notice and service requirements upon owners and parties with an interest in a vehicle subject to the vehicular public nuisance ordinance. The amendments further clarify the timeframe required to vacate or modify a temporary restraining order and define notice and service requirements when the City is unable to obtain an ex parte restraining order under the ordinance.

BUDGET/TIME IMPLICATIONS

There are no time or financial impacts to the City. If CB-2011 is approved on first reading, a public hearing and second reading of the proposed ordinance would be scheduled for Oct. 9, 2023.

STAFF RECOMMENDATION

Staff recommends approval of CB-2011 on first reading.

STAFF REFERENCE

If Council Members have any questions, please contact James S. May, Jr., Chief of Police, at jmay@northglenn.org or 303.450.8967.

SPONSORED BY: MAYOR LEIGHTY

COUNCIL MEMBER'S BILL

ORDINANCE NO.

No. CB-2011
Series of 2023

Series of 2023

A BILL FOR AN ORDINANCE AMENDING CHAPTER 7, ARTICLE 10 CONCERNING VEHICULAR PUBLIC NUISANCES

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

Section 1. Section 7-10-3(i) of the Northglenn Municipal Code is hereby amended as follows:

(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.

Section 2. Section 7-10-3(j) of the Northglenn Municipal Code is hereby amended as follows:

(j) ~~Personal service~~—SERVICE OF SUMMONS, COMPLAINT, AND TEMPORARY RESTRAINING ORDERS.

(1) 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.

(2) SERVICE BY MAIL. SERVICE OF THE SUMMONS, COMPLAINT, AND TEMPORARY RESTRAINING ORDER UPON THE OWNERS OR LIENORS OF A MOTOR VEHICLE THAT CANNOT BE PERSONALLY SERVED, SHALL BE DEEMED SUFFICIENT IF A COPY OF THE SAME IS SENT TO THE PERSON SHOWN AS THE OWNER OR LIENOR ON THE RECORDS OF THE COLORADO DEPARTMENT OF REVENUE, DIVISION OF MOTOR VEHICLES, OR ANY SIMILAR DEPARTMENT OF ANY OTHER STATE, BY FIRST CLASS MAIL, AT THE ADDRESS AS SHOWN ON SUCH RECORDS, AS OF THE DATE OF THE

VEHICULAR NUISANCE OFFENSE, OR AT THE LAST KNOWN ADDRESS GIVEN BY THE OWNER OR LISTED UPON ANY GOVERNMENT ISSUED IDENTIFICATION DOCUMENT BEARING THE PHOTOGRAPH OF THE OWNER OR LISTED UPON APPARENTLY VALID DOCUMENTS VERIFYING THE OWNER'S RECENT PURCHASE OF THE MOTOR VEHICLE THAT ARE IN ACCORDANCE WITH THE LAWS OF THE STATE, PRESENTED TO OR FOUND BY ANY LAW ENFORCEMENT OFFICER, WHETHER OR NOT THE LETTER IS ACTUALLY RECEIVED. SERVICE SHALL BE DEEMED COMPLETED SEVEN (7) DAYS AFTER THE LETTER IS MAILED.

(3) SERVICE BY PUBLICATION. SERVICE OF THE SUMMONS, COMPLAINT, AND TEMPORARY RESTRAINING ORDER UPON THE OWNERS OR LIENORS OF A MOTOR VEHICLE WHO CANNOT BE SERVED PERSONALLY OR BY MAIL AND CANNOT BE SERVED AFTER A GOOD FAITH AND DILIGENT EFFORT TO DO SO, MAY BE SERVED BY PUBLISHING A COPY OF THE SUMMONS TWICE IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE CITY. THE SUMMONS SHALL DESCRIBE THE PROPERTY AT ISSUE AND THE PLACE WHERE A COPY OF THE COMPLAINT, TEMPORARY RESTRAINING ORDER AND ACCOMPANYING DOCUMENTS CAN BE OBTAINED. A PARTY SERVED BY PUBLICATION SHALL HAVE THIRTY (30) DAYS FROM THE DATE OF THE LAST PUBLICATION TO RESPOND.

Section 3. Section 7-10-4 of the Northglenn Municipal Code is hereby amended as follows:

Section 7-10-4. Commencement of Public Nuisance Actions; Prior Notification. TO THE EXTENT THE CITY IS UNABLE TO OBTAIN AN EX PARTE RESTRAINING ORDER UNDER THIS ARTICLE, THE FOLLOWING NOTICE PROVISIONS SHALL APPLY:

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

(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.

Section 4. Section 7-10-5, subsection (e)(3) of the Northglenn Municipal Code is hereby amended as follows:

(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:

* * *

(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.

Section 5. Section 7-10-6 of the Northglenn Municipal Code is hereby renumbered as Section 7-10-7 and each subsequent Section of Article 10 of Chapter 7 shall be renumbered accordingly.

Section 6. A new Section 7-10-6 is added to the Northglenn Municipal Code to read as follows:

Section 7-10-6. Detention of Motor Vehicles Prior to Filing Complaint

(a) General. Detention of motor vehicles before filing a complaint and motion for temporary restraining order are necessary to prevent the removal, destruction, and concealment of motor vehicles in an effort to impede enforcement of the provisions of this Article.

(b) Basis for detention. If any police officer determines that probable cause exists to believe the following, they may detain and impound the motor vehicle as a nuisance:

(1) A vehicular public nuisance has occurred;

(2) The vehicle was used to commit, promote, facilitate, or aid the commission of or flight from a vehicular nuisance; and

(3) The vehicle is capable of being concealed, destroyed, or removed from the City.

(c) Prompt declaration of status of detained property. In any case that a motor vehicle is detained as provided in this Section, the Police Department shall promptly determine, within forty-five (45) days of the date that the motor vehicle is detained as a vehicular public nuisance, if the motor vehicle is available for release, if the motor vehicle is contraband, if the motor vehicle is relevant evidence in a criminal proceeding, or in coordination with the City Attorney's office, if it should file an action under this Article seeking judicial remedies regarding the motor vehicle.

(d) Persons eligible to claim return of detained motor vehicle. Any person claiming any legal or equitable interest or right of possession in any motor vehicle

detained pursuant to this Section may file a motion in an action filed pursuant to this Article for return of the detained motor vehicle.

Section 7. Section 7-10-6 of the Northglenn Municipal Code as renumbered to Section 7-10-7, is amended to read as follows:

Section 7-10-6 7-10-7. 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.

INTRODUCED, READ AND ORDERED POSTED this ____ day of _____, 2023.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

PASSED ON SECOND AND FINAL READING this ____ day of _____,
2023.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney