

BY AUTHORITY

ORDINANCE NO. **4203**

COUNCILLOR'S BILL NO. **31**

SERIES OF 2023

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE ADDING CHAPTER 3 OF TITLE VIII OF THE WESTMINSTER
MUNICIPAL CODE CONCERNING PUBLIC NUISANCE CLOSURE OF MOTOR VEHICLES

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 8-3-1, W.M.C., is hereby ADOPTED as follows:

8-3-1. – Legislative intent.

The abatement of public nuisances related to the unlawful or unsafe operation of motor vehicles for the protection of public health, safety, and welfare is a matter of local concern. The most effective tools for abatement of public nuisances are the civil remedial actions provided in this article, including temporary restraining order, impoundment, abatement agreement, default judgment, final judgment, and closure. The purpose of this article is not to punish, but to remedy public nuisances and thereby promote community safety. The actions provided in this article are designed to remedy public nuisances by removing motor vehicles from criminal use and as a means of facilitating criminal operations, to ensure that criminal activity and the use of motor vehicles for criminal purposes is unprofitable, to prevent loss of health, safety, or property to uninvolved motorists affected by criminal activity, to make motor vehicle owners vigilant in preventing public nuisance offenses on, in, or by the use of their motor vehicle, and making motor vehicle owners responsible for the public nuisance use of their motor vehicle and to deter public nuisances.

The remedies provided in this article are directed at the property involved without regard to ownership, title or right of possession and the culpability or innocence of those who hold these rights. Notwithstanding the foregoing, it is consistent with the remedial purpose of this article to provide reasonable exceptions to the strict application of this Chapter for those owners of a motor vehicle who demonstrate that they are responsible and non-involved owners, as it is more likely that such persons will take the necessary steps to ensure the motor vehicle will no longer constitute a public nuisance in the future. The remedial actions provided in this article are intended to be civil in nature. The remedies of temporary restraining order, impoundment, and closure are intended to be in rem, against the property itself, and not against any individual directly. The remedies of temporary restraining order, civil judgment, and abatement agreement may be partially in personam.

Section 2. Section 8-3-2, W.M.C., is hereby ADOPTED as follows:

8-3-2. – Good Faith Application of Remedies.

(A) In order to ensure that the remedies provided in this article are applied in good faith and solely for the purpose of public nuisance abatement, the following shall apply:

(1) No city employee's or law enforcement officer's employment, promotion, discipline, or level of salary or benefits shall depend upon the frequency or quantity of actions and remedies under this article that he or she produces;

(2) Any financial proceeds resulting from a sale of a motor vehicle under this section shall be deposited in the City's general fund unless otherwise directed by this Chapter.

Section 3. Section 8-3-3, W.M.C., is hereby ADOPTED as follows:

8-3-3. – No Conflict with State Law.

This Chapter 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 Chapter shall be construed to avoid any such direct and express conflict.

Section 4. Section 8-3-4, W.M.C., is hereby ADOPTED as follows:

8-3-4. – Strict Liability.

The public nuisance offenses and the provisions of this Chapter are entirely strict liability in nature. No allegation or proof of culpability or mens rea of any type or degree by any owner of a motor vehicle or defendant shall be required for any filing of a public nuisance action, or the issuance of temporary restraining orders, or other remedies under the provisions of this Chapter.

Section 5. Section 8-3-5, W.M.C., is hereby ADOPTED as follows:

8-3-5. – Comprehensive Enforcement Scheme.

The sections of this Chapter are intended to provide a comprehensive scheme for civil public nuisance abatement for acts involving a motor vehicle and should be read together.

Section 6. Section 8-3-6, W.M.C., is hereby ADOPTED as follows:

8-3-6. – Definitions.

Notwithstanding any other definitions contained elsewhere in this Code, the following terms and definitions shall apply to this Chapter:

Abate: means to bring to a halt, eliminate, or where that is not possible or feasible, to suppress, reduce, and minimize.

Abatement agreement: means the binding written agreement between the City of Westminster and the defendant(s), which is approved and ordered by the court, and describes the obligations upon the defendant(s) as well as the agreed upon consequences for a failure to comply with the agreement.

City: means the City of Westminster.

Close, to close, or closure: means to detain, secure, or impound the motor vehicle, and to lock, board, bar and otherwise close and prohibit all entry, access, and use of the motor vehicle except such access and use as may be specifically ordered by the court for purposes of inventory, maintenance, storage, security, environmental clean-up, sanitation and other purposes, and to vest the sole right of possession and control of the motor vehicle in the City of Westminster for a limited period of time defined by this Chapter or court order. Close, to close, or closure may also mean the permanent transfer of all rights of ownership and possession of the motor vehicle to the city for final disposition.

Defendant: The primary defendant to the action is the motor vehicle itself. However, for purposes of this Chapter, the term Defendant shall include any person named in the action who meets the definition of Owner-Defendant or Party-Defendant below. For purposes of this Chapter, whenever the term Defendant is used it shall be read as including both Owner-Defendants and Party-Defendants.

Flight: means to flee, escape, or leave the place where the public nuisance activity was committed or conducted, whether or not law enforcement is present.

Impound or impoundment: means to move a detained motor vehicle to a city approved impound facility and to retain it temporarily in the legal custody of the city in accordance with any contract or agreement the city makes for the impoundment and/or storage of motor vehicles.

Motor vehicle: means any device of conveyance designed for, or capable of, moving itself or of being moved from place to place upon wheels or track or by water or air, by any power other than human power, whether or not intended for the transport of persons or property, and includes any place therein adapted for overnight accommodation of persons or animals or for the carrying on of business.

Non-involved owner: means an owner of a motor vehicle that is implicated in a public nuisance abatement action, who:

- (1) Did not directly or indirectly encourage, facilitate, allow, promote, participate, aid, abet, conspire, permit, or condone the transaction constituting the public nuisance act, or the flight or attempted flight therefrom; and
- (2) Neither knew, nor should have known, that the subject motor vehicle was used or would be used in the commission of a public nuisance act; and
- (3) Neither knew, nor should have known, that the person who operated the motor vehicle in the commission of the public nuisance act involving the motor vehicle had a prior record or reputation for violating the laws, including traffic laws, of the United States, State of Colorado, City of Westminster, or any other locality within or outside the State of Colorado; and
- (4) Is not the parent or legal guardian of the individual who operated the motor vehicle in the commission of the public nuisance act.

A person who does not otherwise meet the definition of a non-involved owner may nonetheless be deemed a non-involved owner if they were the reporting party who immediately informed law enforcement of the public nuisance act giving rise to the abatement action under this Chapter.

Owner: means the registered owner(s) of the motor vehicle as recorded with the Colorado Department of Revenue, or comparable office of another state, and any other person or entity, including a lienholder, with a present bona fide legal or equitable interest or right of possession in the subject motor vehicle that has been recorded on the motor vehicle's current title. Ownership shall be determined by the City through reasonable efforts at the time the action is commenced. Reasonable efforts shall include, at a minimum, a query of registration through the Department of Revenue and a title search. A person or entity may establish themselves as an additional owner by presenting the court with a bona fide bill of sale, lease agreement, or other reasonably sufficient documentation establishing the person's or entity's legal or equitable interest in the motor vehicle. A straw man shall not be considered an owner for purposes of this Chapter.

Owner-Defendant: means any Owner as defined above who is named as a Defendant in the action. All known Owners must be named as Defendants in the action.

Party-Defendant: means any person who has been named in the action and who is not also an Owner, as defined above. Party-Defendant includes persons who directly or indirectly encouraged, facilitated, allowed, promoted, participated, aided, abetted, conspired, permitted, or condoned the transaction constituting the public nuisance act, or the flight or attempted flight therefrom, as well as any other person whose involvement may be necessary to abate the nuisance, prevent it from recurring, or to carry into effect the court's orders for temporary restraining orders, closures, injunctions and final disposition. Party-Defendants are not necessary or indispensable parties, and the city attorney is not required to name all Party-Defendants in the action.

Public Nuisance Act: The following are proscribed acts for purposes of this Chapter. Where a proscribed act references a section of the Colorado Revised Statutes (C.R.S.), the activity shall have the same meaning or definition as contained within the C.R.S. and any related subsections, but shall not require that the activity was charged or prosecuted to a final judgment before this Chapter applies. For purposes of this Chapter, where a proscribed act references a section of the Westminster Municipal Code (W.M.C.) or Model Traffic Code (2010) (M.T.C), the activity shall have the same meaning or definition as contained within the W.M.C.

or M.T.C. and any related subsections, but shall not require that the activity was charged or prosecuted to a final judgment before this article applies. The existence of a plea agreement to a lesser charge, or dismissal of a charge, does not impede the operation of this Chapter when probable cause existed for the original public nuisance act.

A motor vehicle may be deemed a public nuisance if the public nuisance act occurred within the City of Westminster. Acts that may constitute a public nuisance include:

- A. Two or more offenses for disturbing the peace within any 180-day period, 6-2-3 W.M.C.;
- B. Vehicular eluding, C.R.S. § 18-9-116.5, or eluding or attempting to elude a police officer, M.T.C. § 1413;
- C. Speeding, M.T.C. § 1101(1), where the speed involved was forty (40) miles per hour or more over the posted speed limit, or where the speed was equal to or greater than one hundred (100) miles per hour regardless of the posted speed limit;
- D. Speed contests, exhibition of speed, or aiding and facilitating, M.T.C. § 1105 *et seq*;
- E. Reckless Driving, M.T.C. § 1401(1);
- F. Minimum speed regulations M.T.C. § 1103;
- G. Obstructing highways or other passageways as prohibited in C.R.S. § 18-9-107;
- H. A “drive-by crime” of Assault, 6-2-4(A) W.M.C., Battery, 6-2-5(A) W.M.C., or Unlawful Discharge of a Firearm, 6-2-9(A) W.M.C., when any of which is committed while utilizing a motor vehicle for means of concealment or transportation; or
- I. Any criminal attempt, conspiracy, or aiding/abetting the commission of any public nuisance act defined above. 6-1-6 *et seq* and 6-1-7 *et seq*, W.M.C.

Straw man: means a person who takes part in the purchase lease, or ownership of property in name only, even though such person may become financially obligated under such purchase or lease arrangement; an accommodation party; a nominal party to a transaction; one who acts as an agent for another for the purpose of taking title to property, and executing whatever documents and instruments the principle may direct respecting the property; a person who purchases, leases, or acquires title to property for another person in order to conceal the identity of the real purchaser or lessor from any other party, including, but not limited to, the seller, lessor, any financial institution, lien holder, or governmental agency, regardless of the person's knowledge of the intent of the real purchaser or lessee.

Other Definitions: For any other word or phrase not defined in this Section, the court may look to the W.M.C., the C.R.S., and to its common and ordinary meaning for guidance.

Section 7. Section 8-3-7, W.M.C., is hereby ADOPTED as follows:

8-3-7. – Procedure in General.

(A) The remedies provided in this Chapter are separate and distinct from any criminal penalties provided in this Code, the criminal remedies provided by any other criminal ordinance or statute, other civil remedies, and any administrative proceedings to revoke, suspend, fine, or take other action against any license. The foregoing may not be considered by the court and have no effect on the outcome of this matter. The city may pursue any one or more of the remedies provided in this Chapter, the criminal penalties provided in this Code or other ordinances or statutes, other civil actions or remedies, or administrative proceedings against a license, and may do so simultaneously or in succession.

(B) The civil action provided in this Chapter shall not be delayed or held in abeyance pending the outcome of any proceedings in a criminal, civil, or administrative action, or any action filed by any other person, unless all parties to the action under this Chapter so stipulate and the court approves in its sole discretion.

(C) All actions under this Chapter shall be civil and remedial in nature. The civil action shall be in the nature of a special statutory proceeding under the provisions of this Chapter. All issues of fact and law shall be tried to the court without a jury. No equitable defenses may be set up or maintained in any action under this Section. All orders of final or default judgment under this Chapter shall be in rem. Injunctive remedies,

civil judgements and fees, and the terms of an abatement agreement or temporary restraining order under this Chapter may be partly in personam.

(D) The burden of proof in all proceedings under this Chapter, including proof of any underlying criminal activity forming the basis of a public nuisance, shall be by a preponderance of the evidence, unless a different burden of proof is specified.

(E) The jurisdiction over actions commenced under this Chapter is exclusive to the City of Westminster. Actions under this Chapter may be brought no more than 364 days after the predicate public nuisance act occurred. Unless otherwise agreed to by the city and defendant, no remedy under this section, other than the permanent closure and final disposition of a motor vehicle, shall contain obligations which extend more than 364 days from the date of final judgement or the date an abatement agreement is approved the court.

(F) Proceedings under Chapter shall be governed by the Colorado County Court Rules of Civil Procedure (C.R.C.P.) unless this Chapter or Code provides a different rule. Where this Chapter or Code fails to state a rule, the court may look to the Public Nuisance Abatement Act, C.R.S. section 16-13-301 *et seq.*, as amended, and the cases decided thereunder.

(G) Actions under this Chapter shall be filed only by the Office of the City Attorney for the City of Westminster, or an agent thereof.

(H) Actions under this Chapter may be consolidated with another civil action filed in the City of Westminster under this Chapter involving the same property. Actions under this Chapter shall not be consolidated with any other civil or criminal action except upon the stipulation of all parties and with approval of the court. No party may file any counterclaim, cross-claim, third party claim, or set-off of any kind in any action under this Chapter.

(I) An action under this Chapter shall be commenced by the following:

(1) The city attorney shall file a complaint, including an affidavit in support of impoundment and petition for temporary restraining order with the court. The complaint shall include, at a minimum, the information required by C.M.C.R.P. 204(b)(4), as well as a description of the motor vehicle and its Vehicle Identification Number;

(2) Upon receipt of the affidavit in support of impoundment the court shall make a probable cause determination. If the court determines probable cause does not exist, the court shall reject the affidavit and petition without prejudice and inform the city attorney of the determination, and the procedures specified in W.M.C. 8-3-8(G) apply. If the court determines probable cause exists, then the following procedures shall apply;

(a) Upon receipt of the above materials and a probable cause determination, the court clerk shall assign the matter a case number, docket the civil matter for a first appearance in approximately 21 days unless otherwise ordered by the court, and prepare a summons;

(b) The court having previously determined probable cause exists shall issue an order on the petition for temporary restraining order;

(c) The city attorney shall promptly, but no later than 7 days before the first appearance, serve a copy of the complaint, affidavit including judges signature determining probable cause exists, petition and order granting temporary restraining order, summons, and a copy of this Chapter on the registered owner(s) of the subject motor vehicle, any other owner actually known to the city at the time of filing, and any other defendant identified by the city. The city attorney shall have an ongoing duty to attempt to serve these documents on any other owners discovered during the pendency of this matter.

(d) No answer shall be filed, the city attorney is under no obligation to serve a copy of a blank answer upon any defendant.

(J) Any owner as defined in this Chapter who has not been named as a defendant may intervene under the procedures of this Chapter and shall be added as a defendant, excluding any straw man. No other parties may intervene.

(K) Service upon all defendants shall be deemed sufficient:

(1) In regard to the documents identified in W.M.C. 8-3-7(I)(2)(c) above if made in accordance with C.R.C.P. 304; or

(2) In regard to all other pleadings or papers if made in accordance with C.R.C.P. 305. The last known address of the person to be served shall be determined by referencing either:

- (a) the address listed in the court file;
- (b) the records of the Colorado department of revenue, division of motor vehicles, or any similar department of any other state;
- (c) any government database; or
- (d) any other address where the city can articulate a reasonable belief that the documents will be received by the owner or defendant.
- (e) The City shall make a good faith effort to identify and serve all owners as defined by this chapter.

(L) Service of the documents commencing the action shall be made by the city attorney's office with proof of service filed with the court. Failure to properly execute service shall result in the matter being dismissed without prejudice unless the court finds that any prejudice to the owner or defendant can be reasonably cured.

Section 8. Section 8-3-8, W.M.C., is hereby ADOPTED as follows:

8-3-8. – Detention of motor vehicles and personal property before filing complaint.

(A) *Legislative Intent.* Impoundment of motor vehicles before filing a complaint and petition for temporary restraining order is necessary to prevent the continuance of the public nuisance and the removal, destruction and concealment of motor vehicles to thwart the remedies provided in this Chapter.

(B) Where a motor vehicle is impounded under this Section, the procedures of this Section shall exclusively apply unless otherwise specified.

(C) Any police officer for the City of Westminster may impound and detain a motor vehicle under this Chapter if they determine that there is probable cause to believe that:

- (1) A public nuisance offense has occurred within the city; and
- (2) The public nuisance offense occurred in the motor vehicle, or the motor vehicle was used to facilitate, allow, promote, participate, aid, abet, or permit the transaction constituting the public nuisance act, or the flight or attempted flight therefrom; and

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

(D) Whenever a motor vehicle is impounded under this section, the Westminster Police Department shall submit an affidavit in support of impoundment to the city attorney's office within 3 calendar days, excluding court weekends and city holidays.

(E) Upon receipt of the affidavit in support of impoundment the city attorney's office shall submit the affidavit for a probable cause determination by the court or file a declaration that the motor vehicle is available for release.

(F) If the court finds the affidavit in support of impoundment supports a finding of probable cause for impoundment under this Chapter, then within 14 days of the date the motor vehicle was impounded as a public nuisance, the city attorney's office shall file with the court:

- (1) The pleadings required for the commencement of actions under this Chapter; or
- (2) A declaration that the motor vehicle is available for release and that the city made good faith efforts to serve the registered owner with a notice to that effect in accordance with W.M.C. 8-3-7(K)(2); or
- (3) A declaration the motor vehicle is available for release, but that the motor vehicle is relevant evidence in a criminal proceeding, and is being held as result of that status. The city shall also file a statement that the city made good faith efforts to serve the registered owner with a notice as to the current circumstance of the vehicle, in accordance with W.M.C. 8-3-7(K)(2).

(G) The city attorney's office may decline to submit an affidavit in support of impoundment to the court. The court may determine the affidavit in support of impoundment does not support a finding of probable cause for impoundment under this Chapter, if the court makes this determination, then it shall promptly inform the city attorney's office. If the city attorney's office declines to submit the affidavit for court consideration or the court determines probable cause does not exist, the city attorney's office will then follow the procedures in W.M.C. section 8-3-8(F)(2) above, and the defendant may request a hearing regarding costs pursuant to W.M.C. section 10-1-17(D).

Section 9. Section 8-3-9, W.M.C., is hereby ADOPTED as follows:

8-3-9. – Temporary Restraining Orders in General.

(A) *Legislative Intent.* Public nuisances are a real, direct, and immediate threat to the health, safety, and welfare of the citizens of the City of Westminster. Public nuisances cause immediate and irreparable injury, damages and losses to the citizens of Westminster and their governmental agencies. Actions at law are not an adequate remedy, and the protection of public health, safety, and welfare requires the temporary restraining orders provided in this section. Where probable cause is established, the balance of equities favors the issuance of a temporary restraining order even where other legal actions may be pending. *Ex parte* temporary restraining orders are necessary to provide rapid relief from public nuisances without the delay entailed by adversarial hearings and personal service and to prevent persons from removing, concealing, destroying, encumbering, selling, and transferring property that may be the subject of the remedies in this article. The issuance and execution of temporary restraining orders under this Section shall not be deemed a bailment of property. The owner of the property remains responsible for the maintenance, environmental clean-up, sanitation and security of property subject to temporary restraining orders and shall be permitted reasonable access to the property for these purposes upon application and approval by the court.

(B) The terms of *ex parte* temporary restraining orders created by this Section shall remain continuously in effect until modified by court order.

(C) No security or bond of any type shall be required of the city in obtaining a temporary restraining order under this Section.

(D) Every temporary restraining order under this Section shall briefly 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 is binding upon the motor vehicle, the parties to the action, their attorneys, agents and employees, and any other person who receives actual notice of the order. Service of the temporary restraining order shall be made by the city attorney in accordance with the provisions of this Chapter.

Section 10. Section 8-3-10, W.M.C., is hereby ADOPTED as follows:

8-3-10. – Temporary Restraining Orders.

(A) The court shall issue an *ex parte* temporary restraining order if the petition, supported by an affidavit, shows that there is probable cause to believe that a public nuisance offense has occurred in the city, and that the public nuisance offense occurred in the subject motor vehicle, or the subject motor vehicle was used to facilitate, allow, promote, participate, aid, abet, or permit the transaction constituting the public nuisance act, or the flight or attempted flight therefrom.

(B) The *ex parte* temporary restraining order shall include the following orders for the impoundment and closure of motor vehicles and restraining of persons as to the motor vehicles:

- (1) Declare the motor vehicle closed;
- (2) Order that the Westminster Police Department impound and close the motor vehicle and place the same in police custody, or to retain the same in police custody if previously impounded, until further order of the court;
- (3) The Westminster Police Department may use reasonable force, consistent with department policy, to impound and close the motor vehicle;
- (4) Westminster Police Officers and their agents may enter onto real property to impound and close a motor vehicle; however, they shall not enter into a closed private garage without consent or other legal authorization;
- (5) All defendants shall be ordered to deposit with the Westminster Police Department all documents evidencing ownership, title, registration, keys, combination numbers, magnetic cards and other devices for either access and/or operation of the motor vehicle;
- (6) All persons shall be restrained from removing, concealing, damaging, destroying, selling, giving away, encumbering or transferring any interest in the subject motor vehicle or using the motor vehicle as security for a bond;
- (7) Any other orders that may be reasonably necessary to take the motor vehicle into police custody, wherever located, and to provide access to and safeguard the property.

Section 11. Section 8-3-11, W.M.C., is hereby ADOPTED as follows:

8-3-11. – Motion to Vacate or Modify Temporary Restraining Order or for Return of Closed Property.

(A) Any defendant seeking to modify a temporary restraining order shall, within 14 days of service of the complaint:

- (1) File a motion under this Section, which shall include, at a minimum:
 - (a) The challenges being raised or specific relief being requested; and
 - (b) A statement of the factual and legal grounds upon which the relief is being requested.
- (2) Personally serve a copy of the motion on the city attorney's office;
- (3) File a copy of the motion with the court; and
- (4) Contact the clerk of court at the time of filing to set the motion for a hearing to be held as soon as practicable.

(5) The court will not consider any challenges or requests for relief at the hearing that were not included in the written motion. Challenges as to probable cause will not be considered by the court.

(B) Failure to serve, file, or set the motion for hearing, as provided above, shall constitute a waiver of the motion. Unless otherwise ordered by the court, the temporary restraining order shall remain in effect and shall not be modified until after a trial on the merits or upon the stipulation of the parties to an abatement agreement that is approved by the court.

(C) Unless good cause is shown, a failure to appear by a defendant for a hearing set pursuant to this Section shall result in a waiver of the right to request a modification of the temporary restraining order.

Section 12. Section 8-3-12, W.M.C., is hereby ADOPTED as follows:

8-3-12. – Temporary Restraining Order - Hearing.

(A) Hearings on motions to modify a temporary restraining order shall be to the court and the rules of evidence shall be relaxed. The court, in its discretion, may take sworn testimony or rely on offers of proof and argument.

(B) At hearing, the burden will be on the defendant to show by clear and convincing evidence:

(1) That the requested relief is necessary to avoid a significant burden; and

(2) That the impacts of the significant burden on the defendant substantially outweigh the public safety interest addressed by the temporary restraining order term(s) being challenged.

(C) The court shall not grant an adjournment or continuance of the hearing on the motion to modify or vacate the temporary restraining order unless it finds good cause to do so. If a continuance is granted, the hearing shall be reset as soon as practicable. The court shall enter its findings and order on the motion at the conclusion of the hearing, unless the court finds that it is necessary to take the matter under advisement. In that event, the court shall establish an expedited schedule for the determination.

Section 13. Section 8-3-13, W.M.C., is hereby ADOPTED as follows:

8-3-13. – Non-Involved Owners.

(A) At any time before trial, an owner-defendant may seek relief from the strict application of this Chapter if they are a non-involved owner as defined herein. The owner-defendant may set a hearing on this issue by following the procedure in W.M.C. section 8-3-11(A)(1)-(5). Unless the city stipulates, the burden will be upon the owner-defendant to prove by clear and convincing evidence that they are a non-involved owner. Additionally, the non-involved owner must:

(1) Agree to entry of a stipulated abatement agreement that shall require, at a minimum, that the non-involved owner:

(a) Admit that the motor vehicle constitutes a public nuisance;

(b) Immediately report any trespass, theft or other criminal violation involving the motor vehicle to a local law enforcement agency;

(c) Fully cooperate with all law enforcement agencies in the investigation and prosecution of any criminal acts relating to or underlying a public nuisance offense involving the motor vehicle, either presently existing or in the future;

(d) Pay in full any impoundment fees and costs prior to release of the motor vehicle and agree that failure to pay in full any impoundment fees and costs as ordered will result in the motor vehicle being deemed abandoned;

(e) Execute an agreement releasing the city and its employees, agents, and contractors, from any and all liability related to the temporary restraining order, impoundment,

and storage of the motor vehicle and further agree to indemnify and hold harmless the city for any claims against the city by third parties regarding the title or right of possession to said vehicle;

(f) Comply with any other terms agreed upon by the city and non-involved owner that are approved by the court;

(g) Waive any applicable statute of limitations and agree that the city shall retain subject matter jurisdiction for a period of three years from the execution of the abatement agreement;

(h) Agree to maintain a current mailing address with the city attorney and court, and further agree that all future service will be deemed complete upon the mailing of the materials by First Class U.S. Mail to the address provided;

(i) Agree that failure to abide by the terms of the abatement agreement will result in immediate impoundment and closure of the motor vehicle and setting of the matter for a show cause hearing.

(j) That the abatement agreement shall remain in full force and effect for the duration of its terms, and notwithstanding any term or statute of limitations to the contrary, the city shall have an additional thirty (30) days from the conclusion of the abatement agreement to file any motions related to an alleged violation;

(k) That the court will retain jurisdiction and full authority over the defendant(s) during any litigation regarding an alleged violation, even if the litigation extends beyond the term of the abatement agreement or statute of limitations;

(l) Agreement that a violation of the abatement agreement by any one party to the agreement may result in collateral consequences, such as closure of the vehicle, that will impact the additional parties regardless of their individual fault;

(m) Any other specific condition agreed upon by the parties and approved by the court.

(B) At the conclusion of the abatement agreement, and if no motion alleging a violation has been filed by the city within the subsequent thirty (30) days, the court will enter a final judgment closing the matter. If the motor vehicle is still closed or impounded, it shall be released upon the payment of any outstanding impoundment and storage fees. Failure to pay such fees before entry of final judgment may result in the motor vehicle being deemed abandoned. Failure to pay such fees before entry of final judgment shall not prevent entry of a final judgment order. After entry of final judgment order, return of the motor vehicle to the owner-defendant(s) will be subject solely to the policies and procedures of the impound facility where the motor vehicle is being stored.

(C) Where a defendant who is entering into an abatement agreement is a non-involved owner, the court shall consider the least restrictive terms that are necessary to protect the community against a future public nuisance involving the motor vehicle.

Section 14. Section 8-3-14, W.M.C., is hereby ADOPTED as follows:

8-3-14. – Show Cause Hearings.

(A) The city attorney may allege a violation of a temporary restraining order or abatement agreement by an owner-defendant by the filing of a verified motion to show cause. The motion may be served in accordance with W.M.C. 8-3-7(K)(2).

(B) If the court finds probable cause that the alleged violation occurred, the court shall order the Westminster Police Department to immediately impound and close the motor vehicle, if not already in police custody.

(C) Upon filing of a motion to show cause by the city attorney, a notice of show cause hearing shall be prepared by the clerk and served on the city attorney, the burden shall be on the city to serve the notice as required by (A) above;

(D) The only issue for the court's determination at a show cause hearing under this Section will be whether the city attorney proved, by a preponderance of the evidence, that a breach of the temporary restraining order or abatement agreement occurred.

(1) If the court finds that a breach of a temporary restraining order occurred, the matter shall be immediately set for a trial on the merits. The motor vehicle shall remain impounded until final judgment is entered, and no modifications of the temporary restraining order relating to the violating defendant shall be considered;

(2) If the court finds that a breach of an abatement agreement involving an owner-defendant occurred, the court shall enter a final judgment against the violating owner-defendant, who shall have no further standing in the action. In the absence of any other owner-defendant, the motor vehicle shall be permanently closed and deemed abandoned property that may be disposed of or sold, in the sole discretion of the city, in any manner provided for in the Code;

(3) If no breach is found, the motor vehicle shall be released upon payment of any towing and impoundment fees and costs and the temporary restraining order or abatement agreement shall continue in full force and effect;

(4) A failure to appear by an owner-defendant for a hearing set pursuant to this section shall result in a default judgment entering against the owner-defendant in the civil action, and the owner-defendant shall have no further standing in the action. In the absence of any other owner-defendant the court shall permanently close the vehicle and deem it abandoned property that may be disposed of or sold, in the sole discretion of the city, in any manner provided for in the Code.

(a) The default judgment shall be entered at the time of the failure to appear and stayed for seven (7) days after entry. If the owner-defendant, within the period of the stay, files a request to set aside the default judgment that is supported by good cause for the failure to appear, the court may set aside the default judgment. If no request is filed, the court shall lose jurisdiction to set aside the default judgment after the seven day stay expires.

(E) The city attorney may allege a violation of a temporary restraining order or abatement agreement by a party-defendant by initiating indirect contempt proceedings in accordance with Colorado Rule of Civil Procedure 107. Punishment for such contempt shall be in accordance with W.M.C. section 1-22-1.

Section 15. Section 8-3-15, W.M.C., is hereby ADOPTED as follows:

8-3-15. – First Appearance – Trial on the Merits.

(A) At the first appearance, the court shall set the matter for a trial on the merits within 35 days unless:

(1) The parties stipulate to a continuance for the purpose of entering into an abatement agreement;

(2) The parties present an abatement agreement and the court orders compliance with the abatement agreement;

(3) The court finds that a longer setting is reasonably necessary;

(4) A default judgment enters upon all owner-defendants for failing to appear, at which time the court shall order that the motor vehicle is permanently closed and deemed abandoned property that may be disposed of or sold, in the sole discretion of the city, in any manner provided for in the Code. If multiple owner-defendants exist, the failure of any owner-defendant to appear shall indicate that owner-defendant's abandonment of their property interest in the motor vehicle, and that owner-defendant shall have no further standing in the action.

- (B) When any defendant fails to appear for first appearance or trial, the court may impose court costs against that defendant. Additional fees and costs permitted by this Code may be ordered in a discrete amount or determined at any time prior to the entry of final judgment.
- (C) When a party-defendant fails to appear for the first appearance or trial, the party-defendant shall have no standing to contest the orders of the court relating to an abatement agreement or that are entered pursuant to W.M.C. section 8-3-15(J) below.
- (D) At the first appearance, either party may request from the opposing party a list of witnesses who may be called at trial, copies of documents and pictures, and a description of physical evidence which may be used at trial. Compliance with such disclosures shall occur no later than 14 days before trial unless good cause exists for a later disclosure.
- (1) Written requests for additional discovery may be filed with the court, and the court may, in its discretion, grant or deny such requests, or issue any other discovery orders deemed appropriate.
- (E) There shall be no additional pleadings filed absent order of court.
- (F) There shall be no counter claims or cross claims.
- (G) Any subpoenas shall be issued in accordance with C.M.C.R.P. 217.
- (H) Trial shall be to the court and the Colorado Rules of Evidence shall apply.
- (I) At trial, the burden shall be on the city attorney to establish, by a preponderance of the evidence, that the motor vehicle should be deemed a public nuisance. The elements at trial shall be:
- (1) That, within the City of Westminster, State of Colorado;
- (2) At or about the location, date and time specified in the complaint;
- (3) A public nuisance act occurred in the motor vehicle, or the motor vehicle was used to encourage, facilitate, allow, promote, participate, aid, abet, conspire, permit, or condone the transaction constituting the public nuisance act, or the flight or attempted flight therefrom.
- (J) At the conclusion of the trial, the court shall enter findings as to whether the city met its burden. If the burden was met, the motor vehicle shall be deemed a public nuisance and the court shall enter a final judgment containing one or more of the following orders:
- (1) The motor vehicle is to be permanently closed by the city;
- (2) The motor vehicle is to be closed by the city for no less than 180 days and no more than 364 days.
- (3) The motor vehicle is to be deemed abandoned property that may be disposed of or sold, in the sole discretion of the city, in any manner provided for in the Code;
- (4) A temporary protection order is to be issued allowing an owner-defendant to regain the use of the vehicle, but with restrictions necessary to prevent future violations of this code;
- (5) Any order tailored to prevent the motor vehicle's future use as a public nuisance by a defendant;
- (6) Defendants shall pay a civil judgment and court costs as provided in W.M.C. section 8-3-18.

(K) If the court concludes that the city did not meet its burden, the motor vehicle shall not be deemed a public nuisance, and the court shall enter a final judgement containing the following orders:

- (1) The motor vehicle is to be released to the owner(s);
- (2) Prior to release to the owner(s), the owner(s) shall pay all towing and impoundment fees;
- (3) Failure to pay all towing and impoundment fees as ordered will result in the motor vehicle being deemed abandoned property that may be disposed of or sold, in the sole discretion of the city, in any manner provided for in the Code;

(L) When one or more owner-defendant(s) fail to appear for a trial on the merits without giving notice establishing good cause before the trial was set to begin, there shall be no stay of the entry of default judgment and the court shall not have discretion to set aside the default judgment as to that owner-defendant. In considering whether a defendant's pre-trial notice constitutes good cause for a failure to appear, the court shall also consider the prejudice to any other owner-defendant that would be caused by a further delay of the trial, to include the ability to reschedule and any increased impound fees. If the court determines a delay is appropriate, the court shall make reasonable efforts to reschedule the trial date within 14 calendar days from the date the owner-defendant failed to appear.

Section 16. Section 8-3-16, W.M.C., is hereby ADOPTED as follows:

8-3-16. – Supplemental Remedies for Public Nuisances.

(A) The court may issue any further orders or injunctions it determines will prevent the continuation of the public nuisance act.

Section 17. Section 8-3-17, W.M.C., is hereby ADOPTED as follows:

8-3-17. – Stipulated Final Judgment - Abatement Agreement.

(A) The city and any defendant to an action under this Chapter may, before trial, voluntarily stipulate to the terms of an abatement agreement. Entry into an abatement agreement is in the city attorney's sole discretion and the city attorney need not enter into an agreement. If one or more defendants do not stipulate to an abatement agreement, the city attorney may elect to proceed to trial against all parties or only those who have not entered into an abatement agreement. The terms of any abatement agreement shall be binding upon all defendants entering into the agreement and shall include the following at a minimum:\

- (1) Admission by the defendant(s) that the motor vehicle constitutes a public nuisance;
- (2) Agreement that the motor vehicle will not be involved in any unlawful acts for the duration of the abatement agreement, with the exception of traffic infractions of three points or less, unless otherwise specified in the agreement;
- (3) Requirement that payment for all outstanding and future towing and storage fees must be completed prior to release of the motor vehicle, and in no event later than 60 days after the date the abatement agreement was approved, unless otherwise specified;
- (4) Towing fees and storage fees shall not be waived by the court and each defendant may be found to be jointly and severally liable for the total cost of the fees;
- (5) The court shall impose the civil judgment fee and court costs specified in W.M.C. section 8-3-18 on each defendant. The court may suspend some or all of the civil judgment fee and court costs upon the successful completion of the abatement agreement;
- (6) An agreement by the defendant(s) to waive any claims against the city, its agents or representatives, relating to the towing, storage and/or impoundment of the vehicle, and further agreement

to indemnify and hold harmless the city for any claims against the city by third parties regarding the title or right of possession to said vehicle;

(7) The issuance and execution of the abatement agreement shall not be deemed a bailment of property. The owner of property remains responsible for the maintenance and security of the motor vehicle subject to the agreement and shall be permitted reasonable access to the motor vehicle for these purposes upon application to the court;

(8) That failure to abide by the terms of the abatement agreement will result in the setting of a show cause hearing. If the court finds that a violation of the abatement agreement occurred, it shall result in the immediate and permanent closure and impoundment of the motor vehicle or a permanent protection order prohibiting contact between the violating party and the vehicle;

(9) That the defendant(s) waive any and all rights to challenge or appeal the outcome of a show cause hearing and resulting final judgment;

(10) An agreement by any owner-defendant(s) to immediately report any known trespass, theft, violation of the terms of the agreement, or any other criminal violation involving the subject motor vehicle to a local law enforcement agency;

(11) That defendant(s) shall fully cooperate with all law enforcement agencies in the investigation and legal action resulting from any violation of the agreement or criminal acts relating to or underlying a public nuisance offense involving the subject vehicle, either presently existing or in the future;

(12) An authorization by the owner-defendant(s) which grants law enforcement full access to the real or personal property of the owner as necessary to gain access to the motor vehicle in event of an alleged breach of the agreement;

(13) A waiver of any applicable statute of limitations and agreement that the city shall retain subject matter jurisdiction for a period of three years from the execution of the abatement agreement, or a waiver of the statute of limitations for the life of the vehicle if a permanent protection order issued as a result of a violation of the agreement;

(14) An agreement that each defendant shall maintain a current mailing address with the city attorney and court, and further agree that all future service will be deemed complete upon the mailing of the materials by first class U.S. Mail to the last address provided to the city attorney and court;

(15) Agreement that upon the court finding probable cause for violation of any term of the agreement, the owner-defendant(s) shall immediately surrender the motor vehicle to the City of Westminster for impoundment;

(16) An agreement that the defendant(s) waive any other process, procedures or challenges to closure that they may otherwise be entitled to;

(17) The city attorney may cause the vehicle to be listed on any local, state, or federal informational systems showing the restrictions placed upon the motor vehicle and person(s) who is/are restricted from access to said vehicle;

(18) That the abatement agreement shall remain in full force and effect for the duration of its terms, and notwithstanding any term or statute of limitations to the contrary, the city shall have an additional thirty (30) days from the conclusion of the abatement agreement to file any motions related to an alleged violation;

(19) That the court will retain jurisdiction and full authority over the defendant(s) during any litigation regarding an alleged violation, even if the litigation extends beyond the term of the abatement agreement or statute of limitations;

(20) Agreement that a violation of the abatement agreement by any one party to the agreement may result in collateral consequences, such as closure of the vehicle, that will impact the additional parties regardless of their individual fault;

(21) Any other reasonable stipulations designed to abate the public nuisance, prevent public nuisances from recurring, deter public nuisance activity, and protect public interest, including but not limited to:

- (a) Temporary continued closure of the motor vehicle for a specified amount of time or until certain other conditions are met;
- (b) Restrictions on the use or operators of the motor vehicle;
- (c) Installation of a GPS unit on the motor vehicle to ensure compliance with speed limits, approved uses, or other reasons;
- (d) Restrictions on the storage location of the vehicle;
- (e) Installation of anti-theft devices;
- (f) Agreement to surrender and abandon the motor vehicle into the sole possession and custody of the City of Westminster, such that it may be disposed of or sold, in the sole discretion of the city, in any manner provided for in the Code;
- (g) Any other specific condition agreed upon by the parties and approved by the court.

(22) At the conclusion of the abatement agreement, and if no motion alleging a violation has been filed by the city within the subsequent thirty (30) days, the court will enter a final judgment closing the matter. If the motor vehicle is still closed or impounded, it shall be released upon the payment of any outstanding impoundment and storage fees. Failure to pay such fees before entry of final judgment may result in the motor vehicle being deemed abandoned. Failure to pay such fees before entry of final judgment shall not prevent entry of a final judgment order. After entry of final judgment order, return of the motor vehicle to the owner-defendant(s) will be subject solely to the policies and procedures of the impound facility where the motor vehicle is being stored.

Section 18. Section 8-3-18, W.M.C., is hereby ADOPTED as follows:

8-3-18. – Civil judgment and Liens.

(A) Except as otherwise ordered by the court or stipulated to in an abatement agreement, in every case under this Chapter in which a public nuisance is established, the court shall impose a separate civil judgment and court costs consistent with the Westminster Municipal Code or court rule on each defendant. Court costs may be reduced or suspended in the discretion of the court. In the event there are more than one defendant to an action, such costs are to be imposed individually and independently. The civil judgment shall be for the purpose of compensating the city for the costs of pursuing the remedies under this Chapter and shall be deposited in the city's general fund.

(1) The civil judgment shall be in the actual cost of prosecuting the case including impound and towing costs, as well as any additional actual costs or expenses that were incurred by the city to enforce the provisions of this Chapter and approved by the court, jointly and severally;

(2) The city attorney shall provide a calculation of the civil judgment amount at the time an abatement agreement is entered into or a public nuisance is found by the court, unless an extension is granted by the court.

(B) In the event that the court entered a default judgment and deemed the vehicle abandoned, the civil judgment provided in this Section shall not be imposed and the vehicle shall be disposed of pursuant to the provisions for abandoned property under this Chapter. Court costs may be assessed at the discretion of the court.

(C) The city will deposit all proceeds from the sale of a motor vehicle under this Chapter as well as any collected fees and costs into the city's general fund.

Section 19. Section 8-3-19, W.M.C., is hereby ADOPTED as follows:

8-3-19. – Other Closures, Forfeitures and Confiscations.

(A) Nothing in this Chapter shall be construed to limit or forbid the confiscation, closure, destruction, abatement, or forfeiture of property now or hereafter required, authorized or permitted by any other provision of law. Nothing in this Chapter shall be construed as requiring that evidence and property confiscated, closed, destroyed, abated, or forfeited under other provisions of law be subjected to the special remedies and procedures provided in this Chapter.

Section 20. Section 8-3-20, W.M.C., is hereby ADOPTED as follows:

8-3-20. – Limitation on Action.

(A) Unless otherwise stipulated to by the parties, actions under this Chapter shall be filed no later than 364 days after the public nuisance, or the last in a series of acts constituting the public nuisance, occurred. This limitation shall not be construed to limit the introduction of evidence of public nuisances that occurred more than 364 days before the filing of the complaint when relevant for any purpose.

Section 21. Section 8-3-21, W.M.C., is hereby ADOPTED as follows:

8-3-21. – Severability.

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

Section 22. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this ____ day of _____, 2023.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this ____ day of _____, 2023.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office