



Agenda Memorandum

Agenda Item – {{section.number}}.A.

City Council Meeting
May 22, 2023



Strategic Priority 2: Proactive Public Safety

Enhance public safety to emphasize both prevention and enforcement, engage the community through education and outreach and provide the resources necessary to ensure safety and well-being throughout Westminster.

Subject: First Reading of Councillor's Bills 28, 29, 30, and 31 Amending and Proposing Amendments to the Westminster Municipal Code Addressing Thefts Related to Motor Vehicles, Public Nuisances Related to Motor Vehicles, and Public Safety

Prepared By: David Frankel, City Attorney
Brian Fuselier, Lead Prosecuting Attorney
Mark Brostrom, Assistant Prosecuting Attorney
Mark Hoff, Assistant City Attorney II

Recommended City Council Action:

1. Pass Councillor's Bill No. 28 on first reading amending Chapter 3 of Title VI of the Westminster Municipal Code addressing the unauthorized removal of motor vehicle parts.
2. Pass Councillor's Bill No. 29 on first reading amending Chapter 22 of Title I of the Westminster Municipal Code establishing procedures the Westminster Municipal Court may use to impose and enforce restitution orders.
3. Pass Councillor's Bill No. 30 on first reading amending Chapter 1 of Title X of the Westminster Municipal Code clarifying the Westminster Municipal Court jurisdiction to conduct a hearing regarding the probable cause for impoundment of a vehicle when the vehicle was impounded.
4. Pass Councillor's Bill No. 31 on first reading adding Chapter 3 of Title VIII addressing dangerous vehicle use in dangerous activities on streets, highways and private properties designed for motor vehicle travel.

Summary Statement:

Offenses related to motor vehicle theft have increased dramatically in the last few years. These proposed ordinances are designed to allow for a wider variety of criminal and civil responses to activities related to speed contests, exhibitions of speed, vehicular eluding, thefts related to motor

vehicles, and unauthorized use of motor vehicles. Staff reviewed the current Westminster Municipal Code (W.M.C.), state law, and other cities' ordinances in efforts to identify potential additions or amendments to allow for greater responses to these criminal and civil violations.

These proposed amendments were discussed at the Post City Council meeting on February 27, 2023.

Fiscal Impact:

\$0 in expenditures

Source of Funds:

Not applicable

Policy Issue(s):

Should the City pass ordinances to make additions and amendments to the W.M.C. regarding:

- Unauthorized use of a Motor Vehicle – 6-3-2 W.M.C.;
- Removal of Motor Vehicle Parts – 6-3-13 W.M.C.;
- Motor Vehicle Trespassing – 6-3-7 W.M.C.;
- Impoundment of Vehicles – 10-1-17 W.M.C.;
- Restitution – 1-22-25 W.M.C.; and
- Motor Vehicle Closure – Chapter 3 of Title VIII.

Alternative(s):

City Council could not pass one or more of the proposed ordinances. This is not recommended as it would leave criminal and civil responses to removal of motor vehicle parts, unauthorized use of motor vehicles, motor vehicle trespassing, and speed contest related activities as they currently exist and does not address concerns.

Background Information:

At the February 27, 2023, Post City Council meeting, Staff reviewed these proposed Westminster Municipal Code (W.M.C.) amendments to further augment the City's response to criminal and nuisance-related activities. The City Attorney's Office worked with the Police Department throughout the drafting process and provided several options for consideration. The following proposed amendments focus specifically on the increase in criminal and nuisance-related activities involving motor vehicles. Based on City Council direction, amendments to the W.M.C. are proposed as outlined below.

1. Removal of Motor Vehicle Parts 6-3-13 W.M.C.

Staff is unaware of any municipality with an ordinance specifically prohibiting the unauthorized removal of motor vehicle parts.

The attached ordinance is modeled after a state statute repealed in March 2022. The repeal of the statute coincides with the state's efforts to lower the penalties for a variety of criminal offenses. The proposed ordinance would prohibit the unauthorized removal of motor vehicle parts, including catalytic converters.

An ordinance specifically addressing the unauthorized removal of motor vehicle parts is designed to create a more effective path for the investigation and prosecution of the unauthorized removal of motor vehicle parts. Additionally, because this is not a theft ordinance, the type of evidence necessary for a successful prosecution will be narrowed, which should allow for easier prosecution for these acts. Currently, there is no corollary state statute addressing this criminal activity. This ordinance will fill this void.

2. Motor Vehicle Trespass 6-3-7 W.M.C.

This ordinance is essentially identical to Colorado Revised Statue (C.R.S.) 18-4-502. In March 2022, this statute was reduced from a felony-level offense to a misdemeanor.

Although Westminster has a trespass ordinance that criminalized trespassing in a motor vehicle (Trespassing, 6-3-5(A) W.M.C.), the motor vehicle trespass ordinance before City Council is a more specific ordinance that allows the court the ability to set a bond and hold a defendant accused of motor vehicle trespass pending trial. The current trespassing offense is a petty offense in the state system, and results in an automatic personal recognizance bond.

The expedited speedy trial calendar for the Westminster Municipal Court is expected to deliver quicker results than cases filed in County or District Court. The location of the Westminster Municipal Court is expected to be more convenient to Westminster citizens who are the victims or witnesses in a motor vehicle trespass case inside the City. Prosecution in the Westminster Municipal Court allows for greater local control of how motor vehicle trespass cases are handled in the City.

3. Impoundment of Vehicles 10-1-17 W.M.C.

The City's current impoundment of vehicles code needs to be amended to allow for the impoundment of vehicles under the motor vehicle closure chapter recommended for adoption below. Staff recommends modifications to the W.M.C. to clarify the Westminster Municipal Court's jurisdiction regarding hearing disputes of impoundment of motor vehicle cases. Currently, attorneys and the public are drawing conclusions after reading the ordinance, that Staff does not believe the ordinance accurately reflects the Court's jurisdiction. This update makes clear the Westminster Municipal Court may only have jurisdiction to conduct a hearing regarding the probable cause for impoundment of a vehicle when the vehicle was impounded (1) by order of a Westminster Police Officer, (2) within the City of Westminster and (3) stored at a facility designated by the City.

4. Restitution 1-22-25 W.M.C.

This ordinance establishes procedures the Westminster Municipal Court may use to impose and enforce restitution orders. The adoption of this ordinance has become more important as a result of recent judicial decisions limiting state and municipal court's ability to impose and enforce restitution orders. The adoption of this ordinance will give the Westminster Municipal Court sufficient legal support to better serve the victims of crimes in the city.

5. Motor Vehicle Closure, Chapter 3 of Title VIII W.M.C.

These ordinances address vehicles used in dangerous activities on streets, highways, and private property designed for motor vehicle travel. Beyond the public safety concerns, the activities also create traffic and noise nuisances for residents and visitors to the City of Westminster.

Denver, Aurora, Wheat Ridge, Greenwood Village, and Northglenn currently have ordinances allowing for the closure of vehicles involved in certain public nuisance activities. These jurisdictions address the public nuisances by initiating a public nuisance abatement where a vehicle is closed for a time. Closure is a type of civil public nuisance abatement where the City may impound and restrict use of a vehicle that was involved in a public nuisance. The closure of a vehicle could take the form of restricting who can use the vehicle, restricting the types of use of the vehicle, or prohibiting all use of the vehicle. In the most aggravated cases, a civil closure could result in a loss of ownership.

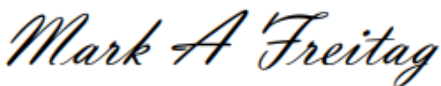
The proposed ordinances take special care to protect a defendant's due process rights by requiring a probable cause determination by a Westminster Police Officer, a Westminster City Attorney, and a Westminster Municipal Judge at the outset of a motor vehicle closure action. Additionally, the ordinances include provisions to protect non-involved owners from suffering significant impacts from the motor vehicle closure process. In all, these ordinances balance the public's right to be free of the nuisance activities identified in the ordinances with the rights of the defendants.

6. Unauthorized Use of a Motor Vehicle 6-3-2 W.M.C.

HB 23-097 passed by the Colorado legislature on May 6, 2023, makes all motor vehicle theft offenses felonies in the State of Colorado. Because the Colorado District Court has exclusive jurisdiction to hear felony level offenses in the State of Colorado, the Westminster Municipal Court does not have jurisdiction to hear cases of motor vehicle theft. HB 23-097 does create a misdemeanor level offense of Unauthorized Use of a Motor Vehicle. This offense is limited in nature, but adoption of this proposed ordinance will give the Westminster Municipal Court the fullest level of jurisdiction available in regard to motor vehicle offenses.

These proposed changes and additions to the Westminster Municipal Code further the City's Strategic Plan goals of Proactive Public Safety by addressing restitution for victims, the criminal and nuisance activities created by speed contests, exhibitions of speed, vehicular eluding, removal of automobile parts, motor vehicle trespass, and unauthorized use of motor vehicles.

Respectfully submitted,

A handwritten signature in black ink that reads "Mark A. Freitag". The signature is written in a cursive, flowing style.

Mark A. Freitag
City Manager

Attachments:

Councillor's Bill No. 28 Amending Title VI, Chapter 3 of the W.M.C. re: Unauthorized Removal of Motor Vehicle Parts

Councillor's Bill No. 29 Amending Title I, Chapter 22 of the W.M.C. re: Impose and Enforce Restitution Orders

Councillor's Bill No. 30 Amending Title X, Chapter I of the W.M.C. re: Probable Cause for Impoundment of a Vehicle

Councillor's Bill No. 31 Amending Title VIII, Chapter 3 of the W.M.C. re: Dangerous Vehicle Use