

**CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER STITES
COUNCIL BILL NO. 07
ORDINANCE NO. 1737
Series 2022**

TITLE: AN ORDINANCE ADOPTING A NEW ARTICLE V IN CHAPTER 13 OF THE WHEAT RIDGE CODE OF LAWS CONCERNING VEHICULAR PUBLIC NUISANCES

WHEREAS, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-15-401, the City, acting through its City Council (the "Council"), is authorized to adopt ordinances for the protection of the public health, safety or welfare; and

WHEREAS, illegal street racing is a dangerous activity which poses a threat to those citizens using both public and private roadways; and

WHEREAS; the intent of this article is not to punish, but to remedy and discourage future vehicular public nuisances; and

WHEREAS, the Council finds and determines that the abatement of vehicular public nuisances for the protection of local health, safety, and welfare is a matter of local concern.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Chapter 13 of the Wheat Ridge Code of Laws is hereby amended by the addition of a new Article V, to read in its entirety as follows:

Article V – Vehicular Public Nuisances

13-80 Purpose.

(a) It is the policy of the city that the abatement of vehicular public nuisances for the protection of public health, safety and welfare is a matter of local concern. Crimes involving vehicles render city residents, visitors, business, and neighborhoods insecure in life and in the use of property. Such crimes and the instrumentalities used to commit such crimes constitute a continuing threat to the comfort, safety, and health of the public. It is expressly declared that the use of vehicles for the commission of nuisance vehicle offenses constitutes a public nuisance within the city that should be eliminated or hindered, and thereby abated, by the means set forth in this article.

(b) The vehicular public nuisances and the provisions of this part are entirely strict liability in nature. Except when necessary to prove the underlying offense(s) or as otherwise provided herein, no culpability or *mens rea* of any type of degree shall be required for any of the vehicular public nuisances, actions, temporary restraining order or remedies under the provisions of this article.

13-81 Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abate shall carry the same meaning as defined in section 15–4 of this Code.

Burnout(s) (also known as a peel out or power brake) is 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.

Chief of Police includes any person designated by the police chief as his or her delegate in the enforcement of this article.

Donut(s) means 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 acceleration-mark pattern of rubber on a roadway and possibly even causing the tires to emit smoke. Donut(s) may also include any maneuver used to create a circular acceleration-mark pattern of rubber on a roadway or causing the tires to emit smoke in the proximity of a bystander.

Drifting means 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).

Illegal street racing means any criminal or traffic violation of federal law, state law, City Code, or Model Traffic Code 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.

Innocent owner means a Record Owner who neither participated in the commission of a nuisance vehicle offense, nor knew or reasonably should have known that the vehicle would be used in the commission of a nuisance vehicle offense. There is a rebuttable presumption that the Record Owner knew or should have known the vehicle would be used in a nuisance vehicle offense, if the vehicle had previously been used within the city to commit, conduct, promote, facilitate, or aid in the commission of or flight from a nuisance vehicle offense.

Model Traffic Code means that edition of the Model Traffic Code for Colorado, promulgated and published by the Colorado Department of Transportation and adopted by the City by reference, codified within Chapter 13 of this Code, as adopted and amended from time to time.

Motor vehicle means 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.

Motor vehicle sideshow means an event in which two or more persons utilize a motor vehicle to block or impede traffic on a highway or other public place open to vehicle traffic, or access private property without the consent of the owner, operator, or agent thereof, for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators.

Nuisance vehicle means a vehicle which is used within the city to commit, conduct, promote, facilitate, or aid in the commission of or flight from a vehicular public nuisance. Nuisance vehicle shall not include a vehicle with respect to which the Record Owner is an Innocent Owner.

Person means natural persons and every legal entity whatsoever, including, but not limited to, corporations, limited liability companies, partnerships, limited partnerships and associations.

Power slide means 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.

Record Owner means the owner with respect to a vehicle as identified in the records of application and registration maintained by the Colorado Department of Revenue or, if the vehicle is registered outside the State, the records of application and registration maintained by the state in which the vehicle is registered. If such Record Owner establishes that the entire property interest in the nuisance vehicle was transferred to a bona fide transferee before the occurrence of the related nuisance vehicle offense, the Record Owner shall mean and include said transferee.

Vehicular public nuisance means any motor vehicle used to commit, conduct, promote, facilitate or aid in the commission of illegal street racing activity. For purposes of this section the underlying criminal or traffic violation forming the basis of the illegal street racing activity shall have the same definition as that contained in the pertinent section(s) of the Colorado Revised Statutes (C.R.S.), as amended, the pertinent section(s) of this Code as amended, the pertinent section(s) of this article, or the pertinent section(s) of the Model Traffic Code as amended. Evidence of the existence of a vehicular public nuisance shall include, but not be limited to, evidence that the motor vehicle was used in one or more of the following street racing related illegal activities:

- (1) All acts defined as Illegal Street Racing in this article;
- (2) Careless driving as prohibited in Model Traffic Code Section 1402 and/or C.R.S. 42-4-1402;
- (3) Eluding or attempting to elude a police officer as prohibited in Model Traffic Code Section 1413 and/or C.R.S. 42-4-1413;
- (4) Vehicular eluding as prohibited in C.R.S. 18-9-116.5;
- (5) Minimum speed regulations as described in Model Traffic Code Section 1103 and/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 Model Traffic Code Section 1401 and/or C.R.S. 42-4-1401;
- (8) Speed contests—speed exhibitions—aiding and facilitating as prohibited in Model Traffic Code Section 1105 and/or C.R.S. 42-4-1105;
- (9) Trespassing as prohibited in Code Section 16-46.

13-82 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 article XX, section 6, and City Charter section 8-2 and Code section 14-4, the municipal court for the City of Wheat Ridge is hereby granted 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 subsections (f)(2) and (f)(3) of this section in relation to any witness who may be called by the prosecution means:

i. A written statement made by such witness and signed or otherwise adopted or approved by the witness;

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

iii. 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 Prosecutor or the Office of the City Attorney for the City of Wheat Ridge.

(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, the Record Owner, the driver of the motor vehicle, 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) *Service.* Service of the summons, complaint, and temporary restraining order upon the Record Owner, driver, and/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 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.

In lieu of personal service, service may be made by leaving a copy of the summons or summons and complaint at the defendant's usual place of abode with some person over the age of eighteen years residing therein or by mailing a copy to the defendant's last known address by certified mail, return receipt requested, not less than 7 days prior to the time the defendant is required to appear. A Record Owner's address may be obtained from the records of the Colorado Department of Revenue, Division of Motor Vehicles, or any similar department of any sister state, as of the date of the public nuisance offense, or at the last known address given by the Record Owner or listed upon any government issued identification document bearing the photograph of the Record Owner or listed upon apparently valid documents verifying the Record Owner's recent purchase of the motor vehicle that are in accordance with the laws of the state.

(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 part shall be ruled on by the Court based upon the written pleadings and without the appearance of the party(ies).

13-83 Temporary Restraining Orders in General.

(a) *Continuous effect of temporary restraining orders.* Ex parte temporary restraining orders shall remain continuously in effect unless modified by court order as provided in Section 13-84(e), 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 of temporary restraining order.* 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.

13-84 Temporary Restraining Orders—Vehicular Public Nuisances.

(a) If the Chief of Police finds and determines upon probable cause that a vehicle is a nuisance vehicle and that the driver's continued use of the vehicle would cause a threat to public health, safety, and welfare; the Chief of Police may immediately seize the vehicle at the time of the offense without prior notice to the Record Owner.

(b) If after the date of a nuisance vehicle offense the Chief of Police determines that a vehicle must be seized without notice to the Record Owner in order to preserve the health, safety, and welfare of the public or of police officers; the Chief of Police may petition the Municipal Court for issuance of a temporary restraining order under this Section.

(c) If probable cause is established to believe that a vehicle is a nuisance vehicle under this article, by means of a complaint supported by an affidavit or testimony evidence accepted at a hearing, the Municipal Court shall issue a temporary restraining order directing the Police Department to seize the nuisance vehicle without notice to the registered owner. Such temporary restraining order shall:

(1) Direct the Wheat Ridge police department to seize and impound the nuisance vehicle, using any reasonable force necessary, and to place the same in police custody in the constructive custody of the court for an abatement period not to exceed twelve (12) months;

(2) Restrain and enjoin all persons from selling, transferring, encumbering, damaging, destroying, or using as security for a bond the nuisance vehicle;

(3) Order all named defendants to deposit with the Wheat Ridge police department all documents evidencing ownership, title, registration, keys and other devices for either access and/or operation of the motor vehicle(s);

(4) Order all 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;

(5) Order the Police Department to provide a copy of the restraining order through personal service to the Record Owner or through certified mailing to the last known address of the Record Owner; and

(6) Issue any other orders that are reasonably necessary to take the vehicle into the Police Department's constructive custody, and to provide access to and safeguard that vehicle.

(d) *Service.* The summons, complaint, and temporary restraining order shall be served as provided by Section 13-82(j).

(e) *Motion to modify or vacate temporary restraining order.* Any person with an ownership interest adversely affected by a temporary restraining order issued pursuant to this Section may file a motion to modify or vacate the temporary restraining order by filing written notice with the Municipal Court within fourteen (14) days after the issuance of the temporary restraining order or the seizure of the vehicle, whichever is later.

(1) The Municipal Court shall be the hearing officer on all motions to vacate or modify a temporary restraining order. Upon receipt of a motion to modify or vacate a temporary restraining order the Municipal Court shall schedule a hearing on the merits of the motion within twenty-one (21) days.

(2) Any motion to modify or vacate a temporary restraining order issued under this Section shall state specifically the factual and legal grounds upon which it is based, only those grounds may be considered at the hearing.

(3) *Burden of proof.* 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. If the Record Owner claims to be an Innocent Owner, the Record Owner shall have the burden of proof to prove by a preponderance of the evidence that the Record Owner is an Innocent Owner.

(4) The Municipal Court shall not modify or vacate a temporary restraining order unless it finds that there is no probable cause to believe

that a vehicular public nuisance occurred, or it is established that the Record owner is an Innocent Owner as defined in this Section.

(5) The provisions of a temporary restraining order, issued under this Section, shall remain in effect unless amended by the Municipal Court.

(6) Any order denying or granting a motion to vacate or modify a temporary restraining order issued under this Section shall be a final order of the hearing officer.

(f) *Release of Motor Vehicle.* Any vehicle which is the subject matter of a final notice and order or a temporary restraining order shall not be released to the Record Owner except upon the following conditions:

(1) Compliance with the terms of the notice and order or the restraining order and expiration of the abatement period set forth in the notice and order or restraining order; and

(2) Payment of all storage fees incurred by the City with respect to the vehicle. Such fees shall be commensurate with, but shall not exceed, the maximum rate that a towing carrier may charge for a nonconsensual tow of a motor vehicle as set forth in Rule 6511, 4 Code of Colorado Regulations 723-6 (2020), as amended.

(3) In the event that the Record Owner and lienors, or any of them, fail, neglect or refuse to pay the fees, expenses, and judgments, within 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 this Code.

(4) Any vehicle which remains unclaimed after the twelve-month period set forth in the notice and order may be sold by the City pursuant to the procedure set forth in Sections 1802 through 1814 of the Colorado 2010 Model Traffic Code as adopted by Section 13-2 of this Code, for sale of abandoned and impounded vehicles. All unpaid storage fees owed pursuant to Subparagraph (2) above shall constitute a lien upon the vehicle and superior to all other liens of any nature.

(g) *Judicial review.* Any final decision of the Hearing Officer may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). The Hearing Officer shall not stay the decision pending any such appeal.

13-85 Civil judgment.

(a) *Judgment 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 in 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 compensating the city for the costs of pursuing the remedies under this article.

(b) The civil judgment shall be in the liquidated sum of at least \$1,000.000 and up to \$2,000.00 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 28 days from when the temporary restraining order is served, 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 section 13-84.

13-86 Voluntary abatement agreement—stipulated alternative remedies.

(a) At any time after the commencement of an action pursuant to this article the city, through the city attorney's office, 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 article. 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.

(b) The Wheat Ridge police department shall render reasonable assistance to effectuate the voluntary abatement agreement.

(c) 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.

(d) Compliance and completion of a voluntary abatement agreement shall preclude a civil action from being filed pursuant to this article for the vehicular public nuisance activity, which was the subject of the voluntary abatement agreement. Nothing herein shall preclude the filing of a civil action pursuant to this article for new vehicular public nuisance activity occurring after completion of the voluntary abatement agreement, or activity not addressed in the voluntary abatement agreement.

13-87 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 and/or perform other acts required of the defendants in the court's temporary restraining orders and other orders.

13-88 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.

13-89 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.

Section 2. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 3. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 7 to 0 on this 9th day of May 2022, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for May 23, 2022 at 7:00 p.m., as a virtual meeting and in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado if allowed to meet in person on that date per COVID-19 restrictions.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 7 to 0, this 23 day of May, 2022.

SIGNED by the Mayor on this 31 day of May, 2022.



Bud Starker, Mayor

ATTEST:



Stephen Kirkpatrick, City Clerk

Approved as to Form



Gerald E. Dahl, City Attorney

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