

ORDINANCE NO. 22-____

AN ORDINANCE REPEALING AND REORDAINING ARTICLE 29 (VEHICULAR PUBLIC NUISANCES) OF CHAPTER 10 (MOTOR VEHICLES AND TRAFFIC) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO CIVIL ABATEMENT OF VEHICULAR PUBLIC NUISANCES AND PROVIDING PENALTIES FOR THE VIOLATIONS THEREOF

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

Section 1. Article 29 (Vehicular Public Nuisances) of Chapter 10 (Motor Vehicles and Traffic) of the Code of the City of Colorado Springs 2001, as amended, is repealed and reordained to read as follows:

ARTICLE 29 VEHICULAR PUBLIC NUISANCES

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10.29.101: POLICY:

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

10.29.102: DEFINITIONS:

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

CLOSE, TO CLOSE, OR CLOSURE: To exercise control over the motor vehicle and remove all owners, occupants, and other persons from the motor vehicle; and to impound, lock, secure, and otherwise close and prohibit all entry, access, and use of the motor vehicle, except access and use as may be specifically ordered by the Court; or for purposes of inventory, maintenance, storage, security, or release of emergency items; and to vest the sole right of possession and control of the motor vehicle in the City of Colorado Springs for a limited period of time defined by Court order.

FAIR MARKET VALUE: The value of the vehicle on a fair market, to be determined by reference to similar sale activity, prior sale activity, or value as described in the Kelley Blue Book or similar reference.

GANG RELATED CRIMINAL ACTIVITY: Any criminal violation of Federal law, State law or City Code committed by any person or persons, individually or acting jointly through a conspiracy or in complicity, where the person(s) is a member of an association or organization which has as one of its purposes the commission of crime.

LEGAL OR EQUITABLE INTEREST OR RIGHT OF POSSESSION: Every legal and equitable interest, title, estate, tenancy, and right of possession recognized by law and equity, including any right or obligation to manage or act as agent or trustee for any person holding any interest or right.

MOTOR VEHICLE OR VEHICLE: 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 streets or 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. This term shall include "recreational vehicle" as defined in City Code §10.1.202. This term also includes any vehicle adapted or modified for overnight accommodation of persons, or for the carrying on of business. Except as otherwise provided, the term "Motor Vehicle" shall include all contents or fixtures of any vehicle.

OWNER: Person or legal entity with a present bona fide legal or equitable interest in the property, or right of possession in the property.

PERSON: Natural persons and every legal entity whatsoever including, but not limited to, corporations, limited liability companies, partnerships, limited partnerships, and associations. This definition is only applicable to this article.

VEHICULAR PUBLIC NUISANCE: A motor vehicle shall be deemed a vehicular public nuisance when it is used to commit, conduct, promote, facilitate, or aid the commission of the below enumerated illegal activity. For purposes of this article, the illegal activity shall have the same definition as that contained in the pertinent section[s] of the Colorado Revised Statutes [C.R.S.], as amended, or the pertinent section[s] of the Code of the City of Colorado Springs [City Code], regardless of the offense classification. Evidence of the existence of a vehicular public nuisance shall include evidence that the motor vehicle was used in one (1) or more of the following enumerated illegal activities:

- A. Prostitution, soliciting for prostitution, pandering, and pimping as prohibited by C.R.S. Title 18, Article 7, Parts 2 and 4 and/or City Code §9.4.102;
- B. Any gang related criminal activity;
- C. Any drive-by crime as defined in C.R.S. §16-13-301(2.2);
- D. Vehicular eluding as prohibited in C.R.S. §18-9-116.5;
- E. Eluding or attempting to elude a police officer as prohibited in C.R.S. §42-4-1413 and/or City Code §10.24.109;
- F. Speed contests and speed exhibitions, or aiding and facilitating a speed contest or exhibition as prohibited in C.R.S. §42-4-1105 and/or City Code §10.5.107;
- G. Reckless Driving as prohibited in C.R.S. §42-4-1401 and/or City Code §10.6.101.

H. Repeated (at least three (3) or more occasions within a five (5) year period) violations of Driving Under Restraint as prohibited in C.R.S. §42-2-138, Driving After Revocation Prohibited as provided in C.R.S. §42-2-206, or Driving Without a License as prohibited in C.R.S. §42-2-101.

VOLUNTARY ABATEMENT AGREEMENT: The written agreement created by defendant(s) and the City in which the civil case is resolved by stipulation. The agreement will be reduced to a written document which will detail stipulated facts and admissions, as well as a plan for abatement of any current and future vehicular nuisance activity. This document will also contain any stipulated remedies or other terms as described in City Code §10.29.112. Finally, this document will contain signatures of all relevant parties and be made an order of the Court.

10.29.103: UNLAWFUL ACT:

A. Unlawful Act: It shall be unlawful to own, possess a legal or equitable interest in, or to operate a vehicular public nuisance, or to knowingly assist in the operation of a vehicle in a manner that constitutes a vehicular public nuisance.

B. Penalties: Any person convicted of violating City Code §10.29.103(A), shall be punished as provided in Sections 201 (General Penalty) and 202 (Minor Offenders) of Part 2 (General Penalty) of Article 1 (Administration) of Chapter 1 (Administration, Personnel, and Finance) of the Code of the City of Colorado Springs 2001, as amended.

10.29.104: PROCEDURE IN GENERAL:

A. Strict Liability: Vehicular public nuisance actions and the provisions of this article are entirely strict liability in nature. Unless otherwise provided, no culpability or mens rea of any type or degree shall be required for any of the vehicular public nuisance allegations, actions, temporary restraining orders, or remedies under the provisions of this article.

B. Remedies Cumulative and Supplementary: The remedies provided in this article are cumulative and supplementary to any criminal ordinance or statute, other civil remedies, and/or any administrative proceedings to revoke, suspend, fine, or take other action against any license or license holder. The City and other entities 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. Any definition of "public nuisance" or "vehicular public nuisance" located in any other article of the City Code is not

impacted by this article. The definitions in this article are intended to apply to this article exclusively.

C. No Delay In Proceedings: In the event that the City or other relevant entity pursues criminal 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, civil, or administrative action, or any action filed by any other person, unless all parties so stipulate.

D. Nature of Action: All actions under this article shall be civil and remedial in nature without a punitive element. 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 section may be partly in personam.

E. Burden of Proof: 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.

F. Rules of Evidence: In any hearing to determine whether there is probable cause, the Court shall temper the rules of evidence and admit hearsay evidence unless the Court finds that such hearsay evidence is not reasonably reliable and trustworthy.

G. Jurisdiction, Duties and Power: Pursuant to Colorado Constitution Article XX, section 6 and City Charter section 8-10, the Municipal Court for the City of Colorado Springs is hereby granted the jurisdiction, duties, and powers for this article.

H. Rules Governing Action and Discovery: Proceedings under this article shall be governed by the Colorado Rules of Civil Procedure ("C.R.C.P.") to the extent that they are not in conflict with this article. Vehicular public nuisance actions shall be included in the category of "expedited proceedings" specified in C.R.C.P. Rules 16 and 26. Discovery shall be governed by the Colorado Rules of County Court Procedure. Where this article or the C.R.C.P. fail to state a rule of decision, the Court shall first look to the state Public Nuisance Abatement Act, C.R.S. §16-13-301 et seq., and the cases decided thereunder.

I. Filing: Actions under this article shall be in writing and filed by the Office of the City Attorney for the City of Colorado Springs.

J. Defendant(s) To Action: The defendant(s) to the action, and the persons liable for the remedies in this article, include the motor vehicle itself, any person owning or claiming any legal or equitable interest or right of possession in the motor vehicle or personal items inside 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 vehicular public nuisance, prevent it from recurring, or to enforce the Court's orders. None of these parties shall be deemed necessary or indispensable parties. Only the above enumerated parties may intervene in the civil action.

K. Standing: To establish standing to intervene or file motions/pleadings in a vehicular public nuisance action a party must first prove by a preponderance of the evidence that the party has an ownership interest in the motor vehicle at issue, or personal property contained therein. Ownership or registered interest in the property may be proved with reference to the factors enumerated in C.R.S. §16-13-303(5)(c).

L. Consolidation of Actions: Actions under this article may be consolidated with other civil actions under the same article involving the same property. Actions under this article shall not be consolidated with any other civil or criminal action. No party may file any counterclaim, cross-claim, third party claim, or setoff of any kind in this action.

M. Service of Process by Mail: Service of process upon the owners and lienors of a motor vehicle shall be deemed sufficient if a copy of the same is sent via first-class mail to the person shown as the owner or lienor on the records of the Colorado Department of Revenue, Division of Motor Vehicles, or any similar department of any sister state, as of the date of the vehicular public nuisance offense, or at the last known address given by the owner or listed upon any government issued identification document bearing the photograph of the owner, or listed upon apparently valid documents verifying the owner's recent purchase of the motor vehicle that are in accordance with the laws of the state, presented to or found by any law enforcement officer whether or not the documents are actually received. Service shall be deemed completed seven (7) days after mailing via first-class mail.

N. Rulings on Pleadings: The issuance of a temporary restraining order, orders on stipulated filings, entry of written stipulations and voluntary abatement agreements, entry of default judgment, and other uncontested matters pursuant to this article shall be ruled on by the Court based upon the written pleadings and without the appearance of the parties, unless otherwise deemed necessary by the Court.

10.29.105: NOTIFICATION PRIOR TO FILING OF VEHICULAR PUBLIC NUISANCE ACTION:

A. Notification Prior to Filing Vehicular Public Nuisance Action: At least twenty-one (21) calendar days before filing a civil action under this article, written notice shall be served upon the owners and lienors of a motor vehicle alleged to be a vehicular public nuisance. Service shall be in accordance with City Code §10.29.104(M).

B. Contents of Notice: The notice shall describe the nature of the alleged vehicular public nuisance, shall identify, to the extent possible, the person(s) actively involved in the vehicular public nuisance and identify the specific motor vehicle involved. The notice shall further advise the recipient that an action under this article may be filed unless the recipient enters into a voluntary abatement agreement with the City pursuant to City Code §10.29.112 within twenty-one (21) days of service of the notice.

1. Filing of Notice: A copy of the prior notification required by City Code §10.29.105 (B) shall be referenced in, and included as an exhibit to, the complaint commencing any action and shall include the date of mailing, identifying information, and any address information obtained pursuant to City Code §10.29.104(M).

C. Reasonable Assistance: The Colorado Springs Police Department shall provide reasonable assistance in any effort to voluntarily abate a vehicular public nuisance.

D. No Defense: The fact, if it exists, that a defendant took steps to abate a vehicular public nuisance after receiving the notice specified in this section shall not constitute a defense to an action. However, it may be considered when determining what remedies are appropriate after a finding of a vehicular public nuisance by the Court.

10.29.106: COMMENCEMENT OF VEHICULAR PUBLIC NUISANCE ACTION:

Commencement of Action: An action under this article shall be commenced by the filing of a written complaint, verified by an affidavit, and a motion for temporary restraining order. Included and referenced in the complaint shall be a copy of the prior written notice required by City Code §10.29.105.

10.29.107: TEMPORARY RESTRAINING ORDER - ISSUANCE AND CONTENTS:

A. General: The Court shall issue an ex parte temporary restraining order if the motion for temporary restraining order, supported by affidavit, shows that there is

probable cause to believe that the specified motor vehicle is a vehicular public nuisance. The Court shall serve the temporary restraining order in the same manner as described in City Code §10.29.104(M) upon all parties who were served the prior notification required by City Code §10.29.105, and any other known defendant(s) which meet the definition in City Code §10.29.104(J). The Court Clerk shall serve the temporary restraining order by placing a copy in the mail via first class mail within one business day of the Court signing such order.

B. Continuous Effect of Temporary Restraining Orders: Temporary restraining orders shall remain continuously in effect unless modified by Court order as provided in City Code §10.29.108 and City Code §10.29.112. Temporary restraining orders may also be modified or vacated after trial on the merits and further order of the Court. A temporary restraining order that has been continuously in effect for a period of two (2) years from the date it was signed by the Court that has not resulted in the closure/detention of a motor vehicle shall expire and be deemed vacated.

C. No Security or Bond: No security or bond of any type shall be required to be posted by the City in obtaining any temporary restraining order under this article.

D. Form and Scope of Temporary Restraining Order: Every temporary restraining order shall set forth the reason(s) for its issuance, be reasonably specific in its terms, and describe in reasonable detail the acts and conditions authorized, required, or prohibited. The temporary restraining order shall be binding upon the property, the parties to the action, their attorneys, agents, employees, and any other person who receives actual notice of the order.

E. Terms Contained within the Temporary Restraining Order: The temporary restraining order shall make the following orders:

1. The Colorado Springs Police Department shall be ordered to close/detain the motor vehicle using any reasonable force necessary and to place the same in police custody, preventing its use for any purpose until further order of the Court. Any personal property contained within or attached to the vehicle at the time of closure/detention is considered part and parcel of the motor vehicle and shall be held in the same manner unless by further order of the Court. However, the relevant Colorado Springs Police Department impound lot may release emergency items of personal property to those who can provide proof of ownership, consistent with their policies and procedures. These emergency items include as an example, but are not limited to: identification documents, medications, car seats, or items like a laptop needed for school or employment.

2. All named defendants shall be ordered to deposit with the Colorado Springs Police Department copies of any documents in their possession that evidence ownership, title, registration, and/or any keys and other devices for either access to and/or operation of the motor vehicle.

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

4. All persons shall be restrained from removing, concealing, damaging, destroying, selling, giving away, encumbering, or transferring any interest in the motor vehicle, or using the motor vehicle as security for a bond during the pendency of the action or the closure/detention of the vehicle, whichever is longer.

5. Person(s) 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 to prevent it from recurring during the pendency of the civil action.

6. The Court may also enter any other orders that may be reasonably necessary to take the motor vehicle into the Court's constructive custody, and to safeguard the motor vehicle. The Colorado Springs Police Department may also engage in normal process for impounded vehicles, and they may conduct an inventory of the vehicle and items contained therein.

F. Effective Date of Temporary Restraining Order: The temporary restraining order shall become effective twenty-one (21) days after the date the temporary restraining order is signed by the Court, unless within that twenty-one (21) day period a person claiming a legal or equitable interest or right of possession in the motor vehicle properly files, serves, and sets a hearing on the written motion to modify, vacate, or stay the temporary restraining order as provided and described in City Code §10.29.108. No temporary restraining order shall permit the closure/detention of a motor vehicle until this twenty-one (21) day period has elapsed.

10.29.108: MOTIONS TO MODIFY, VACATE, OR STAY TEMPORARY RESTRAINING ORDER:

A. General: Any defendant or any person holding any legal or equitable interest or right of possession in any motor vehicle subject to a vehicular public

nuisance action, or any personal property contained within the vehicle, may file a motion to modify, vacate, or stay the execution of the temporary restraining order and/or for the return of the motor vehicle, or property contained within the motor vehicle. The Court must hold a hearing on a motion to modify, vacate, or stay a temporary restraining order unless a stipulated agreement is subsequently filed. Proceedings on these motions shall be as provided in this section. Any order to release the vehicle applies only to a hold upon the vehicle under this article, and does not impact any other evidentiary holds or processes.

B. Limitations: All motions to modify, vacate, or stay a temporary restraining order must be submitted to the Court in writing. Any motion to modify, vacate or stay a temporary restraining order must specifically state the factual and legal grounds upon which it is based, and only the grounds stated in the motion may be considered at the hearing. If a moving party fails to appear at a hearing set on a motion to modify, vacate, or stay a temporary restraining order, without notifying the Court prior to the start time, the Court shall deem the motion abandoned and deny the motion. This failure to appear does not toll or suspend any time frames. If the moving party fails to appear, but notifies the Court prior to the hearing start time, the Court shall construe the moving party's notice as a motion to continue and shall determine whether there is good cause to continue the hearing. If no good cause is shown, the motion shall be deemed abandoned and denied.

C. Rules of Evidence: In any hearing regarding a motion to modify, vacate, or stay a temporary restraining order, the Court shall temper the rules of evidence and admit hearsay evidence unless the Court finds that such hearsay evidence is not reasonably reliable and trustworthy.

D. Required Method of Service: The following method of service must be used when filing a motion to modify, vacate, or stay the execution of a temporary restraining order:

1. The moving party to any motion to modify, vacate, or stay a temporary restraining order must file a written motion with the Municipal Court, set a hearing date, and serve a copy of the motion and notice of the hearing date on the Office of the City Attorney, Prosecution Division.

2. The Court shall provide a copy of the notice of hearing to the Office of the City Attorney, Prosecution Division upon the setting of any hearing.

E. Effect of Motion Filing on Temporary Restraining Order: The filing of a motion to modify, vacate, or stay a temporary restraining order will have the following effects on the temporary restraining order:

1. If a motion to modify, vacate, or stay a temporary restraining order is filed prior to the temporary restraining order becoming effective, the filing of the motion and setting of a hearing date will automatically stay the effective date of the temporary restraining order until the conclusion of the required hearing, when the Court will either grant or deny the temporary restraining order, or issue further orders.

2. If a motion to modify, vacate, or stay a temporary restraining order is filed after the temporary restraining order becomes effective, the filing of the motion will not impact the validity or effectiveness of the temporary restraining order, which will remain in effect during the pendency of the motions hearing unless upon further order of the Court.

F. Scheduling: The following rules will govern the scheduling of hearings on any motions to modify, vacate or stay execution of a temporary restraining order:

1. The proceedings in this article are considered expedited proceedings. As such, the Court and parties shall set hearings on these matters as soon as practicable, and shall prioritize hearings on these matters.

2. Despite the expedited nature of these proceedings, the Court may continue a hearing on any motion to modify, vacate, or stay execution of a temporary restraining order upon stipulation of the parties. In addition, the Court may grant either party a continuance of the hearing for good cause but must continue to set the hearings as soon as practicable, with priority, and on an expedited schedule.

G. Motion to Stay Execution of Temporary Restraining Order:

1. At any time prior to the execution of the temporary restraining order (specifically, the closure/detention of the vehicle), a defendant may file a motion to stay execution of the temporary restraining order pursuant to the requirements listed in this sub-section.

2. At the hearing, the moving party shall have the burden of proving by a preponderance of the evidence the following:

a. A legal or equitable interest in or right of possession to the vehicle at issue;

b. That the moving party defendant is using all reasonable efforts to abate any vehicular public nuisance activities;

c. That these efforts are likely to abate the activities giving rise to the vehicular public nuisance; and

d. That the public health, safety, and welfare will not be impaired by granting a stay of execution of the temporary restraining order.

3. If the moving party meets their burden of proof, the Court shall enter a single stay of execution of the effective date of the temporary restraining order for a total of forty-five (45) days. At the conclusion of the forty-five (45) day stay of execution, the temporary restraining order will become active, effective, and subject to execution unless upon further order of the Court.

4. The Court may only grant one stay of execution.

5. The purpose of any stay of execution is to grant a defendant additional time to obtain legal counsel, conduct investigation, prepare for a trial on the merits, or engage in negotiation with the City Attorney for a potential voluntary abatement agreement.

H. Motion to Modify or Vacate Temporary Restraining Order Prior to Closure/Detention of Vehicle:

1. At any time prior to the execution of the temporary restraining order (specifically, the closure/detention of the vehicle), a defendant may file a motion to modify or vacate the temporary restraining order pursuant to the requirements listed in this sub-section.

2. At the hearing, after the moving party shows a legal or equitable interest or right of possession to the vehicle at issue, the City shall have the burden of proving that there is probable cause to believe that a vehicular public nuisance exists as alleged with the motor vehicle at issue.

3. If the Court finds that there is not probable cause to believe that a vehicular public nuisance exists as alleged, the Court shall revoke and vacate the temporary restraining order.

4. The Court shall not vacate the temporary restraining order unless it finds that there is no probable cause to believe that a vehicular public nuisance exists, or that the order is manifestly unreasonable or unjust. Modifications to the terms within the temporary restraining order shall only occur in the discretion of the Court, and shall not change the closure/detention order.

5. The only relevant issues at hearing on the motion to vacate or modify the temporary restraining order are the existence of a legal or equitable interest in the vehicle, and whether probable cause exists that a vehicular public nuisance exists as alleged. Therefore, any other defenses or issues are deemed irrelevant and shall not be considered.

I. Motion to Modify or Vacate Temporary Restraining Order After Closure/Detention of Vehicle:

1. At any time after the execution of the temporary restraining order (specifically, the closure/detention of the vehicle), a defendant may file a motion to modify or vacate the temporary restraining order pursuant to the requirements listed in this sub-section.

2. At the hearing, after the moving party shows a legal or equitable interest or right of possession to the vehicle at issue, the City shall have the burden of proving that there is probable cause to believe that a vehicular public nuisance exists as alleged with the motor vehicle at issue.

3. If the Court finds that there is no probable cause to believe that a vehicular public nuisance exists as alleged, the Court shall vacate and revoke the temporary restraining order. Additionally, the Court shall order release of the vehicle with no fees or costs imposed. However, the Court shall order release of the vehicle to occur only within standard business hours for the relevant impound lot. The Court shall also close the action at this time.

4. The Court shall not vacate the temporary restraining order or release the vehicle unless it finds that there is no probable cause to believe that a vehicular public nuisance occurred on or in the relevant vehicle, or that the order is manifestly unreasonable or unjust. The Court may modify other terms of the temporary restraining order in its discretion.

5. The only relevant issues at hearing are the existence of a legal or equitable interest in the vehicle, and whether probable cause exists that a vehicular public nuisance exists as alleged. Therefore, any other defenses or issues are deemed irrelevant and shall not be considered.

6. The Court, under this sub-section, may also hear and rule on a motion to release personal property from inside the vehicle that has been closed/detained. The Court may order release of personal property in its discretion after proof of actual ownership of the item at issue. The Court shall also order the moving party to comply with the policies for release of property from the relevant impound lot. Any order to release property shall

be a written order, with copies provided to all known parties. The exception to this requirement is detailed in City Code §10.29.107(E)(1) which allows the impound lot to release emergency items of personal property consistent with their internal policies and procedures. These emergency items include as an example, but are not limited to: identification documents, medications, car seats, or items like a laptop needed for school or employment.

J. Consolidated Hearing on Motion to Modify, Vacate, or Stay Temporary Restraining Order and Trial on the Merits: Where all parties so stipulate, the Court may order the trial on the merits to be consolidated and tried with a hearing on any or all of these motions. Where the trial on the merits is not consolidated, any evidence received at the hearing on these motion(s) need not be repeated at trial but shall be treated as part of the record at trial.

10.29.109: BOND PROVISION:

A. General: The owner of a vehicle that has been closed/detained pursuant to this article may motion the Court to release the vehicle on bond for the pendency of the civil action. The Court may only release a vehicle on bond when the following conditions are met:

1. The moving party proves by a preponderance of the evidence that they possess a legal or equitable interest or right of possession in the vehicle; and
2. The moving party has not been found guilty of contempt of court in any proceedings; and
3. The moving party demonstrates by evidence satisfactory to the Court that the vehicular public nuisance has been abated and will not reoccur; and
4. The moving party agrees, under penalty of contempt of court, to return the vehicle to the jurisdiction and custody of the Colorado Springs Police Department upon order of the Court; and
5. The moving party agrees to abide by any additional conditions of bond proscribed by the Court, including but not limited to posting a monetary bond, prohibiting certain individuals from operating the vehicle, or any other term reasonably calculated to ensure that the vehicular public nuisance activity does not reoccur.

6. Other terms of the restraining order also remain in effect, including the term prohibiting sale or encumbrance of the vehicle.

B. Procedure: The following procedures apply when an owner motions the Court to release a vehicle on bond for the pendency of the civil action:

1. The motion must be in writing and must be served upon the City Attorney's Office, Prosecution Division. The motion must state with particularity the grounds supporting the motion. The Court may rule upon the pleadings regarding releasing the vehicle on bond, but only after allowing seven (7) days for the City to respond in writing, or the Court may set the motion for a hearing.

2. If the Court chooses to release the vehicle during the pendency of the action pursuant to this subsection, the Court shall impose a monetary bond of not less than the fair market value of the vehicle, and any additional terms the Court in its discretion finds are necessary to prevent reoccurrence of the vehicular public nuisance during the pendency of the action, and to ensure return of the vehicle if ordered by the Court. The Court shall only accept a cash bond, and shall not permit a surety. The bond will be paid to the Municipal Court and held pending resolution of the action. A bond may be forfeited pursuant to similar provisions in this Code when appropriate.

10.29.110: ANSWER; TRIAL ON THE MERITS:

A. General: The Court will hold a trial to the Court on the merits of the Vehicular Public Nuisance Action if any defendant files a responsive Answer within twenty-eight (28) days from when the summons, complaint, and motion for temporary restraining order is mailed, or twenty-eight (28) days after the vehicle at issue has been closed/detained, whichever is later.

B. Required Method of Service: The following method of service must be used when filing a responsive Answer:

1. The filing party must file a written Answer with the Municipal Court, and set a trial date with the Clerk of Court. Then, the filing party must serve a copy of the Answer and Notice of the Trial Date on the Office of the City Attorney, Prosecution Division.

2. The Court shall provide a copy of the Notice of Trial Date to the Office of the City Attorney, Prosecution Division upon the setting of any trial.

C. Scheduling: The Court shall prioritize the scheduling of a trial on the merits, and shall consider the trial to be an expedited proceeding. However, the Court may grant a continuance of the trial upon stipulation of the parties, or may grant a continuance request of either party upon a finding of good cause.

D. Burden of Proof: At trial, the City shall have the burden of proving by a preponderance of the evidence that a vehicular public nuisance exists as alleged with the motor vehicle at issue.

E. No Defense: The fact, if it exists, that a defendant took steps to abate the vehicular public nuisance after receiving the notification prior to filing as required by City Code § 10.29.105 shall not constitute a defense. It shall only be relevant for purposes of imposing remedies if the Court finds that a vehicular public nuisance exists.

F. Order of the Court: The Court shall issue a written order following a trial on the merits. The written order shall contain the following, where applicable:

1. Where the existence of a vehicular public nuisance is established by a preponderance of the evidence, the Court shall enter written prohibitory and mandatory injunctions requiring the defendant(s) to abate the vehicular public nuisance and take specific steps to prevent the same and other vehicular public nuisances from occurring. The Court shall order other remedies as required or permitted by City Code § 10.29.111, including a determination of the length of the closure/detention of the vehicle at issue, a civil judgment, and the relevant fees and costs to be imposed. The Court shall include a short factual finding section as part of its order.

2. Where the existence of a vehicular public nuisance is not established by a preponderance of the evidence, the Court shall enter a written order releasing the vehicle at issue and vacating the temporary restraining order. No fines, costs, impoundment or storage fees of any kind will be assessed in this instance. However, the Court shall order release of the vehicle to occur only within standard business hours for the relevant impound lot. The Court shall include a short factual finding section as part of its order. This order will also serve to close the action.

G. Failure to Appear: If the defendant(s) to an action fail to appear at the trial on the merits without notifying the Court in advance of the trial date and time, the Court shall enter an order of default judgment pursuant to City Code § 10.29.115. If the defendant(s) to an action fail to appear at the trial, but calls to notify the Court prior to the start time of the trial, the Court shall construe this as a motion to continue and shall determine whether there is good cause to continue

the trial. If no good cause is shown, the Court shall enter default judgment pursuant to City Code §10.29.115.

10.29.111: REMEDIES FOR VEHICULAR PUBLIC NUISANCES:

A. General: The following remedies exist for a vehicular public nuisance and are intended to be remedial not punitive. The Court shall address each of the following remedies in any written order following a trial on the merits and shall order those which are warranted given the facts of the case. Any voluntary abatement agreement may impose the same remedies but is not required to do so.

B. Closure/Detention of Motor Vehicle: The motor vehicle involved in a vehicular public nuisance shall be closed/detained by impoundment of a period of not less than thirty (30) days and not more than one (1) year from the date of the final judgment, plus any extension of that period caused by a failure to comply with the reasonably necessary conditions for release of the motor vehicle. The issuance and execution of the closure/detention order shall not be deemed a bailment of property. The Court may, but is not required to, take into account the number of days the vehicle has already been detained pursuant to the Temporary Restraining Order, and may reduce the closure length by the number of days the vehicle has already been detained.

C. Fees and Actual Expenses: The Court shall order that the defendant(s) pay all towing fees, impoundment/storage fees, and all actual expenses incurred by the City in pursuing the action. Determination of the amount of fees, costs and actual expenses may be done through written filing and responses, and the Court may rule on the pleadings without holding a hearing. Alternatively, evidence of the amount of fees, costs, and actual expenses may be presented at any hearing.

1. Upon a showing of good cause, the Court may reduce the impoundment and storage fees owed pursuant to paragraph (C) of this subsection, but shall not reduce the storage fees to an amount lower than the fair market value of the vehicle.

a. For the purposes of this paragraph (C), "good cause" may be established by a preponderance of the evidence that the storage fees exceed the fair market value of the vehicle. This may be shown using hearsay evidence.

b. The Court must make written findings of fact and conclusions of law that the moving party has established, by a preponderance

of the evidence, that good cause exists to support any decision to reduce the amount of impoundment and storage fees owed.

D. Civil Judgment: In any case in which a vehicular public nuisance is established at trial, in addition to the remedies provided above, the Court shall impose a separate civil judgment on every person who committed, conducted, promoted, facilitated, or aided the commission of any vehicular public nuisance or who held any legal or equitable interest, or right of possession in any motor vehicle used in the vehicular public nuisance activity.

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

E. Other Terms or Orders: The Court is permitted to enter any additional orders designed to prevent reoccurrence of the vehicular public nuisance activity, and such orders shall be valid for a period not to exceed two (2) years from the date of the order.

10.29.112: VOLUNTARY ABATEMENT AGREEMENT:

A. Policy and Goal: The goal of any voluntary abatement agreement is to abate the vehicular public nuisance, prevent vehicular public nuisances from recurring, deter future vehicular public nuisance activity, and protect the public interest.

B. General: The following general provisions apply to all voluntary abatement agreements:

1. The City, through the City Attorney's Office, Prosecution Division, and any 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.

2. The Court shall make the written stipulations and voluntary abatement agreement an order of the Court and shall enforce the same. The remedies provided in City Code §10.29.111 shall be applicable in the event of noncompliance with the voluntary abatement agreement.

3. Filing of a voluntary abatement agreement prior to the commencement of an action 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, or shall signify the resolution of any civil action that was filed previously. Nothing herein shall

preclude the filing of a new civil action pursuant to this article for new vehicular public nuisance activity occurring after filing of the voluntary abatement agreement, or newly discovered activity not explicitly addressed in the voluntary abatement agreement.

4. A voluntary abatement agreement shall require the defendant(s) to maintain any abatement terms or conditions for a period not less than one (1) year and not to exceed two (2) years.

C. Contents: Every voluntary abatement agreement shall be in writing, and shall contain the following terms or sections:

1. Stipulated Findings of Fact: The document shall state the facts underlying the vehicular public nuisance activity and contain an admission or stipulation to those facts by the defendant(s) to the agreement.

2. Abatement Terms: The document shall also contain terms designed to abate the vehicular public nuisance activity. These can include, but are not limited to: excluded drivers, sale of the vehicle at issue, and/or any other agreed upon action that is likely to prevent the reoccurrence of any vehicular public nuisance activity.

3. Terms Regarding Release of Vehicle: If the vehicle was detained pursuant to a temporary restraining order, the agreement shall contain a description of when the vehicle may be released, to whom, and the conditions that must be satisfied prior to the release. This can include, but is not limited to: release of the vehicle after a certain period of detention, release of the vehicle after payment of all towing/storage/impound fees, or release after signing a waiver of claims against the City.

4. Civil Judgment: Every voluntary abatement agreement must contain a term stipulating whether or not the civil judgment is to be assessed, and upon which parties, if any.

D. Pre-File Voluntary Abatement Agreement:

1. A voluntary abatement agreement may be executed and filed at any time prior to the commencement of a civil action under this article. A civil action case number will be assigned to effectuate this filing, and for the Court to enter the agreement as an enforceable order of the Court.

2. Upon the filing of a voluntary abatement agreement, no civil action for the vehicular public nuisance activity described therein shall be filed. However, this does not preclude action under City Code §10.29.113 upon

the occasion of non-compliance with the agreement and order of the Court.

E. Stipulated Voluntary Abatement Agreement:

1. A stipulated voluntary abatement agreement may be filed at any time following the filing and commencement of a civil action under this article.

2. The filing of a voluntary abatement agreement and adoption of the agreement as an order of the Court shall constitute the conclusion of the civil action. The voluntary abatement agreement shall contain terms which address any outstanding issues in the case.

F. Quick Release to Non-Involved Owner with Voluntary Abatement Agreement: A non-involved owner has the option to obtain a quick release of a detained vehicle upon the execution of a voluntary abatement agreement under this subsection.

1. Definition: A Non-Involved Owner is a person who holds a legal or equitable interest in the vehicle at issue, and who neither participated in the activity constituting a vehicular public nuisance, nor knew or should have known that the vehicle would be used in the commission of a vehicular public nuisance.

2. Terms: A voluntary abatement agreement to obtain a quick release of a vehicle to a Non-Involved Owner shall have the following terms and conditions unless otherwise stipulated:

a. The Non-Involved owner agrees and stipulates that the vehicle at issue was involved in the vehicular public nuisance activity.

b. If applicable, specified individual(s) will not be allowed access to the vehicular public nuisance vehicle for a period of two (2) years following the execution of the agreement.

c. The Non-Involved owner agrees that the vehicle will not be involved in any vehicular public nuisance activity for two (2) years following the execution of the agreement.

d. The Non-Involved owner agrees to pay in full the accrued towing costs and any fees associated with the impoundment or storage of the vehicle.

e. The Non-Involved owner agrees to waive any claims against the City, its agents or representatives, and the Colorado Springs Police Department, relating to the towing, storage and/or impoundment of the vehicle. Further, the Non-Involved owner agrees to indemnify the City for any claims against the City by third parties regarding the title or right of possession to the vehicle and/or any items contained therein.

f. The Non-Involved owner agrees that the vehicle may be listed on law enforcement information systems showing the person(s) who are restricted from access to said vehicle.

g. The Non-Involved owner agrees that upon a violation of this agreement, the City can open, or re-open, a civil action under this article without any prior notice requirements, and that upon written motion the Court may impose any and all remedies authorized by City Code §10.29.111 without limitation.

h. The Non-Involved owner agrees that no trial on the merits will occur. At most, there will only be a hearing to prove by a preponderance of the evidence that there has been a breach of the voluntary abatement agreement and order of the Court.

3. Stolen Vehicles: Stolen vehicles can be released to the registered owner upon providing proof of ownership, proof the vehicle was stolen, and a voluntary abatement agreement to prevent similar vehicular public nuisances from occurring in the future. Monetary terms can be removed from any voluntary abatement agreement in this circumstance.

10.29.113: PROCEDURE UPON VIOLATION OF COURT ORDER OR VIOLATION OF VOLUNTARY ABATEMENT AGREEMENT:

A. General: The following general principles will apply in the event that a party violates a Court order or voluntary abatement agreement that has been adopted by the Court as an order:

1. In the event that a defendant fails, neglects, or refuses to comply with an order of the Court or fails, neglects, or refuses to comply with the terms of the voluntary abatement agreement that has been adopted as an order of the Court pursuant to City Code §10.29.112(B)(2), the City may file a written motion to re-open the civil case and request imposition of further remedies and penalties by the Court.

2. Remedies can be in addition to proceeding with contempt of court.

3. No temporary restraining order shall be issued.

B. Procedure: The following procedures shall apply upon motion by the City for failure of a defendant to comply with a Court order or voluntary abatement agreement adopted by the Court:

1. No advance written notice shall be required to re-open the civil action. City Code §10.29.105 is inapplicable to this subsection.

2. The City shall file a written motion detailing the alleged violation of the Court order as well as a request for imposition of additional remedies. The City shall serve the motion upon all defendants. Service shall be by first-class mail to the last known address of the defendant as described in City Code §10.29.104(M).

3. Upon receipt of a motion under this subsection, the Court shall re-open the civil case and set a hearing on the motion. Scheduling of this hearing shall be as described in City Code §10.29.108(F). This hearing is not a trial on the merits pursuant to City Code §10.29.110, and all issues of law and fact shall be heard by the Court and not a jury.

4. At the hearing on the City's motion, it shall be the burden of the City to show by a preponderance of the evidence that the defendant(s) violated the Court order or voluntary abatement agreement adopted by the Court, as alleged.

5. In any hearing regarding an allegation of noncompliance with a Court order or voluntary abatement agreement, the Court shall temper the rules of evidence and admit hearsay evidence unless the Court finds that such hearsay evidence is not reasonably reliable and trustworthy. The Court shall also take judicial notice of the Court File, including the relevant Court order or Voluntary Abatement Agreement.

6. After the hearing, the Court shall make written findings of facts regarding whether the City has proven that the defendant(s) violated an order of the Court, and the Court shall order additional remedies if applicable.

C. Remedies: If the Court finds that a party has violated the terms of a Court order, the remedies and potential orders include any remedy listed in City Code §10.29.111. These remedies will be cumulative, or consecutive, to any remedies previously imposed including an additional civil judgment and assessment of additional costs, fees and expenses. The Court shall issue a written order detailing

which remedies are being imposed. The Court may also issue an order to close/detain the vehicle as stated in City Code §10.29.111(B).

10.29.114: RELEASE OF VEHICLE:

A. General: Any vehicle closed/detained pursuant to Court order under this article may only be released as follows:

1. By Order of the Court: Upon written order of the Court, defendant(s) may obtain possession of the vehicle during business hours from the relevant impound lot by presenting the Court order and identification documents.

2. After the Closure Period: After a trial on the merits, the written Court order shall state a period of closure/detainment for the vehicle. At the end of the closure/detainment period, the motor vehicle shall be released to the owner only upon:

a. Payment of all towing fees, storage fees and all actual expenses incurred by the City and payment of all civil judgments under City Code §10.29.111 as ordered by the Court; and

b. Compliance with the required policies of the relevant impound lot regarding presenting the Court order and identification documents.

3. In Compliance with Court Adopted Voluntary Abatement Agreement: If a voluntary abatement agreement has been reached and adopted by the Court, release of the vehicle will occur only after compliance with the terms of that agreement, and in compliance with required policies of the relevant impound lot.

10.29.115: DEFAULT JUDGMENT AND/OR ABANDONMENT OF VEHICLE:

A. Default Judgment and/or Abandonment of Vehicle: In the event that the defendant(s) fail to file an Answer within twenty-eight (28) days from when the summons, complaint, and motion for the temporary restraining order is mailed, or twenty-eight (28) days from when the vehicle at issue is closed/detained, whichever is later, the Court shall enter a default judgment and an order deeming the vehicle abandoned.

B. No Civil Judgment or Fees Imposed Upon Default: In the event a default judgment and order of abandonment are entered, the civil judgment described

in City Code § 10.29.111 (D) shall not be imposed and the vehicle shall be disposed of pursuant to the provisions of City Code § 10.25.106. Additionally, costs and fees associated with impoundment will not be imposed by the Court.

C. Default Judgment Effect on Temporary Restraining Order and Civil Action: Upon any default judgment the temporary restraining order is deemed vacated as moot. Additionally, after the entry of a default judgment, the civil action is deemed completed and may be closed.

D. Vehicle Abandonment: After a final order and judgment is entered by the Court releasing the vehicle from closure/detainment, the owners and lienors must comply with those orders within a reasonable time period. If the owners and lienors fail, neglect, or refuse to pay the fees, expenses, and judgments, within ninety (90) 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.

E. Motion for Relief from Default: Within ten (10) days after the entry of an order of default judgment and/or abandonment of vehicle, a party may move to set aside the order. Such motion must be in writing and served upon the City Attorney's Office, Prosecution Division. After ten (10) days, if there is no such motion filed with the Court, the City may begin the process of disposing of the vehicle. Any motion for relief from default must state, with particularity, the grounds upon which the moving party is asking for the judgment to be vacated. The Court can rule on the pleadings or require a hearing on the issue. The standard for granting or denying a motion for relief for default will be as described in C.R.C.P. 55 and C.R.C.P. 60.

10.29.116: 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.

10.29.117: LIMITATION ON ACTION:

A. Statute of Limitations: Actions under this article shall be filed no later than one (1) year after the vehicular public nuisance activity 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 (1) year before the filing of the complaint when relevant for any other purpose including upon motion for violation of Court order.

B. Expiration of Temporary Restraining Order: A temporary restraining order that has been continuously in effect for a period of two (2) years from the date it was signed by the Court, and has not resulted in the closure/detention of a motor vehicle, shall expire. Upon such expiration, the civil action shall be deemed administratively closed.

10.29.118: SEVERABILITY:

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

Section 2. Any person convicted of a violation of Section 103 (Unlawful Act) of Article 29 (Vehicular Public Nuisances) of Chapter 10 (Motor Vehicles and Traffic) shall be punished as provided in Section 201 (General Penalty) and Section 202 (Minor Offenders) of Part 2 (General Penalty) of Article 1 (Administration) of Chapter 1 (Administration, Personnel, and Finance) and Section 104 (Right to Trial by Jury; Jail; Exceptions) of Part 1 (Trial by Jury) of Article 4 (Jury Provisions) of Chapter 11 (Municipal Court) of the Code of the City of Colorado Springs 2001, as amended.

Section 3. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 4. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____day of
_____, 2022.

Finally passed:

Council President

Mayor's Action:

- ☐ Approved on _____.
- ☐ Disapproved on _____, based on the following objections:

Mayor

Council Action After Disapproval:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Finally adopted on a vote of _____, on _____.
- ☐ Council action on _____ failed to override the Mayor's veto.

Council President

ATTEST:

Sarah B. Johnson, City Clerk

CAO: _____
COS: _____