

ARTICLE 10: VEHICLE NUISANCE ORDINANCE

Section

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§ 7-10-1 SHORT TITLE.

This article will be known and may be cited as the "Vehicle Nuisance Ordinance."

(Ord. 42-2002)

§ 7-10-2 FINDINGS AND INTENT.

(A) The City Council finds that there is a significant risk to the health and safety of the community caused by drivers who abuse their privilege to operate vehicles on the public streets and thoroughfares of Albuquerque by engaging in racing, drag racing, exhibition driving, road rage taunting and other activities as defined and prohibited by this Article. The City Council finds that the problems addressed by this Article are matters of unique local concern which are not being adequately deterred by general statewide laws, in part, because monetary penalties alone do not deter nuisance drivers. The temporary seizure or forfeiture of the vehicle of a nuisance driver are appropriate remedial measures that will provide safer streets in the City of Albuquerque.

(B) The Council further finds that the vehicles of nuisance drivers cause considerable property damage, bodily harm and loss of life in the City of Albuquerque. The danger, noise, fear and distraction produced and caused by nuisance drivers leads to immeasurable harm to the community. The noise and distraction generated by nuisance vehicles interferes with drivers' ability to detect and respond to dangerous or emergency driving conditions and circumstances including but not limited to horn noise and the siren noise of official emergency vehicles. The purpose of this Article is to abate the nuisance caused by the use of vehicles by irresponsible drivers by employing progressive sanctions including temporary loss or permanent forfeiture of the vehicle.

(Ord. 42-2002)

§ 7-10-3 VEHICLE NUISANCE - SPECIFIC VIOLATIONS.

A vehicle is hereby declared a nuisance subject to the penalty provisions of this Article if it is operated by a person or persons engaged in any of the following enumerated acts:

(A) Drag Racing and Other Competitive Racing. It shall be unlawful for any person or persons to engage or participate in a drag race or race for speed within the city limits unless otherwise excepted herein. For purposes of this section, a drag race or competitive race for speed shall be and the terms shall mean any situation or circumstance where two or more persons operate vehicles in such a manner as to cause such vehicles to be side by side on the roadway, or one slightly ahead of the other, and either from a stopped position or while moving, to accelerate such vehicles rapidly with the intent to race or otherwise out gain the other. The provisions of this section shall not apply to authorized or licensed race courses, or other areas which are specifically set aside and supervised by the police department for police training. In any prosecution for a violation of this section, intent may be shown from the surrounding circumstances, from admissions from the violators, from the observations of a law enforcement officer or in any other manner in which intent may be proven in any civil or criminal action under New Mexico law.

(B) Exhibition Driving. It shall be unlawful for any person to engage in exhibition driving of any vehicle within the city limits. For purposes of this section, exhibition driving shall be and the term shall mean driving a vehicle in such a manner that it creates or causes unnecessary or excessive engine noise, tire squeal, skid or slide upon acceleration, braking or stopping or by operating a vehicle in a manner that willfully creates excessive engine noise by revving the engine. Exhibition driving shall also mean driving a vehicle in a manner that causes the vehicle to unnecessarily turn abruptly or sway and driving and executing or attempting one or a series of unnecessarily abrupt turns. Exhibition driving shall also mean carrying passengers on a part of the structure of the vehicle not designed for that purpose including but not limited to the hood. In any prosecution for a violation of this section, intent may be shown from the surrounding circumstances, from admissions from the violators, from the observations of a law enforcement officer or in any other manner in which intent may be proven in any civil or criminal action under New Mexico law.

(C) Using a Vehicle as an Instrument of Threat or Intimidation - Road Rage. It shall be unlawful for any person or persons to use a vehicle as an instrument of threat or intimidation in the city limits. For purposes of this section, use of a vehicle as an instrument of threat or intimidation, or so-called road rage driving, shall be and the terms shall mean driving a vehicle dangerously or conspicuously close to or behind or near another vehicle or suddenly stopping or accelerating and rapidly switching lanes or positions on the roadway with the intent to taunt or retaliate against another driver for any

reason. The use of one or more vehicles to willfully prevent another vehicle from lawfully passing shall also be a violation of this section. In any prosecution for a violation of this section, intent may be shown from the surrounding circumstances, from admissions from the violators, from the observations of a law enforcement officer or in any other manner in which intent may be proven in any civil or criminal action under New Mexico law.

(D) Excessively Loud Electronic Sound or Music. It shall be unlawful for any person or persons to play or produce excessively loud sound or music in any vehicle operated on any public street in the city limits. For purposes of this section, excessively loud electronic sound or music shall be and the terms shall mean the use of any machine or device for reproducing sound including any magnifying sound instrument used in the production or replication of music, spoken words or other sounds and designed to enlarge the volume of any instrument, voice or other sound including but not limited to radios, stereos or so called "boom boxes." It shall be a violation of this section if any such sound is plainly audible twenty-five feet from the subject vehicle.

(E) Modification of Exhaust Systems. It shall be a violation of this section for any person to operate any vehicle in the city limits with a modified exhaust system. A modified exhaust system shall mean any change or alteration to the exhaust system found on the vehicle when it was originally manufactured when such change results in noise that exceeds the noise the vehicle made when manufactured. Any violation of ROA 1994 §§ 8-6-13 or 9-9-9(A) through (D) shall also be a violation of this paragraph.

(Ord. 42-2002; Am. Ord. 21-2009) Penalty, see § 7-10-99

§ 7-10-99 PENALTY.

(A) First Offense. A person who violates any provision of this Article the first time shall be subject to the penalty provisions of § 1-1-99 ROA 1994.

(B) Second Offense. A second offense is a second violation of any one of the above listed specific violations in any four year period of time. For a second offense, the violator shall be subject to the penalty provisions of § 1-1-99 ROA 1994. In addition, the vehicle of the violator shall be subject to the temporary seizure penalty below.

(1) Temporary Seizure. For a second offense, the vehicle the offender was driving at the time of the offense will be temporarily seized by the City by placement of an immobilization device ("Boot") on the vehicle by the Albuquerque Police Department ("APD"). The Boot shall remain on the vehicle for thirty days. APD will remove the Boot forthwith within a reasonable time not to exceed five days after the thirty days has expired.

(2) Storage. The boot will be placed on the vehicle at a storage location chosen by APD or at the violator's residence or other legal location chosen by the violator. If the violator chooses to place the vehicle at any location other than a storage site selected by APD, the violator shall agree to hold the City harmless from any property damage or other liability incurred during the time of seizure, storage and transportation to storage. If the violator chooses to place the vehicle at any location other than a storage site selected by APD, the violator or owner shall not be responsible for storage fees.

(3) Notice of Seizure. Prior to booting the vehicle, APD will deliver a Notice of Seizure to the violator. A Notice of Seizure will not be required if the vehicle is seized pursuant to an arrest of the driver or seized pursuant to a search under a warrant.

(4) Notice to Registered Owner. APD will immediately mail by ordinary mail a Notice of Seizure to the registered owner if the registered owner is a person different than the violator according to the records of the New Mexico Motor Vehicle Division ("MVD").

(5) Contents of Notice. The Notice of Seizure shall contain the following information:

- The license plate number;
- Make, type and color of the seized vehicle;
- Location of storage;
- The reason for seizure including the violated section of this Article;
- The name and phone number of a city employee who can provide other information;
- A statement that daily storage charges and a towing charge will be assessed;
- The address of the hearing officer and notice that any person has the right to contest the propriety of the seizure by requesting a hearing in writing within ten days from the date the Notice of Seizure was mailed or delivered.

(6) No Return. The vehicle seized will not be subject to replevin or other civil proceeding for return of the vehicle.

(7) Hearing. If the violator or owner seeks to challenge the seizure, the violator or owner must within ten consecutive calendar days from the date the Notice of Seizure

was mailed or delivered request in writing a hearing to be conducted by the City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994). The hearing shall be scheduled within 20 consecutive days of the receipt of the request. The hearing is an informal hearing and not bound by the technical rules of evidence. The hearing officer will determine only whether APD had probable cause to seize the vehicle under this Article.

If the hearing officer finds that APD did not have probable cause to seize the vehicle or that the vehicle should otherwise be released, the hearing officer shall issue an Order of Release which shall be delivered to the owner or violator. Upon receipt of any such Order of Release by APD, APD shall release the vehicle to the owner or violator and storage fees shall be waived.

Prior to release of the vehicle at the expiration of 30 days or otherwise, the owner or violator or their agent must pay all reasonable costs of towing and storage of the vehicle including a charge of eight dollars per day for the Boot or appropriate storage. The vehicle shall not be released until all charges are paid and written proof of insurance of the vehicle is provided to APD. The City shall not be responsible to any third person who incurs any damages by an uninsured vehicle inadvertently released by APD. The vehicle shall not be released if an inspection reveals that the vehicle is in violation of any section of this Article. If the vehicle is in violation of § 7-10-3(E) above pertaining to modification of an exhaust system or improper removal of pollution controls, the owner or violator shall have fifteen days from the release date to repair the condition. Failure to repair the violation of § 7-10-3(E) within fifteen days of the release date is a separate violation of this Article.

(C) Third or Subsequent Offense. A third or subsequent offense is a third or greater violation of any one of the above listed specific violations in any four year period of time. For a third or subsequent offense, the violator shall be subject to the penalty provisions of § 1-1-99 ROA 1994. In addition, the vehicle of the violator shall be subject to forfeiture provisions of § 7-6-1 et seq., ROA 1994.

(Ord. 42-2002; Am. Ord. 31-2007; Am. Ord. 11-2008)