

LOCAL LAW NO.17-2023

BY COUNCIL PRESIDENT COLLINS-BELLAMY, MAJORITY LEADER DIAZ, MAJORITY WHIP RUBBO, MINORITY LEADER BREEN, COUNCILMEMBERS, WILLIAMS, PINEDA –ISAAC AND MERANTE:

A LOCAL LAW AMENDING CHAPTER 85 ENTITLED, "FORFEITURE OF VEHICLES IN CONNECTION WITH CRIMINAL ACTS" IN RELATION TO FORFEITURE OF VEHICLES ATTEMPTING TO EVADE POLICE OFFICERS

Be it enacted by the City Council of Yonkers as follows:

Section 1. Part VII of the Code of the Yonkers entitled, "Nuisances, Public Welfare and Criminal" is hereby amended by partially amending Chapter 85 entitled, "Forfeiture of Vehicles in Connection with Criminal Acts", to read as follows:

Chapter 85. Forfeiture of Vehicles in Connection With Criminal Acts.

§85-1. Forfeiture of vehicles operated by persons while engaged in unlawful speed contests or races or evading police at high speeds.

- A. The Corporation Counsel may commence a civil action for forfeiture to the City of any vehicle, as such term is defined in subdivision fourteen of section 10.00 of the Penal Law, when such vehicle is operated or used by a person who is arrested or issued a summons by any police officer of the Yonkers Police Department for engaging in or aiding or abetting in any motor vehicle or other speed contest or exhibition of speed on a highway as prohibited by section eleven hundred eighty-two of the Vehicle and Traffic Law and such person is convicted or pleads guilty to any offense arising out of such arrest or summons. In order to establish its case in any action commenced under this subsection, the City shall demonstrate, by a preponderance of the evidence in the civil forfeiture proceeding, that such person engaged in or aided or abetted in any motor vehicle or other speed contest or exhibition of speed on a highway as prohibited by section eleven hundred eighty-two of the Vehicle and Traffic Law and that such person's operation or use of such vehicle contributed directly and materially to the commission of such offense.

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B. The Corporation Counsel may commence a civil action for forfeiture to the City of any vehicle, as such term is defined in subdivision fourteen of section 10.00 of the Penal Law, when such vehicle is operated or used by a person attempting to unlawfully elude or flee from any police officer of the Yonkers Police Department. In order to establish its case in any action commenced under this subsection, the City shall demonstrate, by a preponderance of the evidence in the civil forfeiture proceeding, that such person unlawfully fled or eluded any police officer as prohibited by sections 270.25, 270.30, or 270.35 of the Penal Law and that such person's operation or use of such vehicle contributed directly and materially to the commission of such offense.

C B. A civil action seeking forfeiture brought pursuant to this section shall be commenced in the County of Westchester within sixty (60) days after such person has been convicted of any offense arising out of his or her arrest or summons under section eleven hundred eighty-two of the Vehicle and Traffic Law ~~subdivision of section eleven hundred ninety-two of the Vehicle and Traffic Law~~, if brought pursuant to subsection A. of this section, or within sixty (60) days after such person has been convicted of any offense arising out of his or her arrest or summons under sections 270.25, 270.30, or 270.35 of the Penal Law ~~section eleven hundred eighty-two of the Vehicle and Traffic Law~~, if brought pursuant to subsection B. of this section. The Yonkers Police Department shall make a timely notification to the Office of the Corporation Counsel regarding such conviction, or other disposition of the applicable criminal action or proceeding regarding such person.

§85-2. Notice to vehicle operator, owner, and lienholder.

A person who is arrested or summonsed by any police officer of the Yonkers Police Department for an offense under section eleven hundred eighty-two of the Vehicle and Traffic Law or under sections 270.25, 270.30, or 270.35 of the Penal Law, shall receive notice at the time of arrest or summoning on such charge and by certified mail, return receipt requested, as soon thereafter as practical, informing such person how and when the vehicle may be released and that the vehicle may be subject to a civil forfeiture proceeding. In the event that the driver is not the registered owner of the vehicle, separate notice shall be provided to the registered owner of the vehicle. Notice shall also be provided to any lienholder. Notice pursuant to this section shall be to the address recorded with the Department of Motor Vehicles of New York State or any other state, territory, district, province, nation or other jurisdiction, by certified

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mail, return receipt requested. The procedures set forth in Chapter 109 of the Code of the City of Yonkers with respect to impoundment, towing, storage and release of vehicles shall apply whenever a person has been arrested for an offense under section eleven hundred eighty-two of the Vehicle and Traffic Law or under sections 270.25, 270.30, or 270.35 of the Penal Law.

§85-3. Notice to the City of owner's intention to transfer ownership or possession of vehicle.

- A. The owner of a vehicle subject to forfeiture pursuant to this article must notify the City of any intention to transfer ownership or possession of such vehicle, no later than fifteen days prior to such transfer. Notice provided pursuant to §85-2 shall set forth the time and manner and procedures for such notification to the City. The provisions of this section shall remain in effect until the resolution of the forfeiture proceeding, provided, however, that the notice requirement herein shall expire as follows:
- (1) if the vehicle may be subject to forfeiture ~~pursuant to subsection A. of §85-1~~ of this Chapter - (a) on the sixty-first (61st) day after any conviction of any offense arising out of an arrest or summons for an offense under section eleven hundred eighty-two of the Vehicle and Traffic Law or sections 270.25, 270.30, or 270.35 of the Penal Law, in the event that the City has not commenced a forfeiture proceeding pursuant to this article prior to such day; or (b) on the day that the criminal action or proceeding against the person arrested or summonsed for violation of any provision of section eleven hundred eighty-two of the Vehicle and Traffic Law or sections 270.25, 270.30, or 270.35 of the Penal Law is terminated in favor of such person without a conviction, as set forth in subdivision three of section 160.50 of the Criminal Procedure Law.
- B. (i) Nothing in this section shall be construed to affect the ability of an entity that leases vehicles or a lienholder to exercise its lawful rights to obtain possession of a vehicle under a contract or applicable law.
- (ii) In the event of a transfer of title or possession pursuant to clause (i) of this subsection, the person or entity that affects such transfer shall provide notice to the City of its action as soon as practicable and in no event later than seventy-two hours subsequent to such action.

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- C. A person who transfers title or possession of a vehicle without providing notice to the City as required by this section shall be subject, upon a judgment that the vehicle shall be forfeited, to a penalty in the amount of fifteen hundred dollars in addition to the fair market value of the vehicle at the time of the arrest. Evidence of such fair market value may be established with reference to publications such as, but not limited to, Kelley Blue Book or NADA guide.

§85-4. City's provisional remedies.

- A. Upon receiving notification pursuant to section §85-3, the City may apply for a court order, either prior to or subsequent to the commencement of the civil forfeiture proceeding, to ensure that the vehicle remains available pending the outcome of the civil forfeiture proceeding pursuant to this article. In such an application, the City may request appropriate measures including, but not limited to, an order of the court restraining the transfer of title or possession of such vehicle, retention by the City of the vehicle pending the outcome of the forfeiture proceeding, or a bond in the amount of fifteen hundred dollars plus the fair market value of the vehicle at the time of the arrest, to be determined as set forth in subsection C. of §85-3.
- B. If a person is arrested or summonsed by any police officer of the Yonkers Police Department for an offense under section eleven hundred eighty-two of the Vehicle and Traffic Law or sections 270.25, 270.30, or 270.35 of the Penal Law and such person is not convicted or does not plead guilty to any offense arising out of such arrest or summons, any vehicle retained pursuant to subsection A. of this section will be returned to him or her, or in the event that another person has a superior right of possession in such property, to such other person.

§85-5. Innocent owner affirmative defense; lienholder's interest.

- A. It shall be an affirmative defense to an action brought pursuant to this article that the owner of the vehicle, other than the person arrested or summonsed for an offense under section eleven hundred eighty-two of the Vehicle and Traffic Law or sections 270.25, 270.30, or 270.35 of the Penal Law, did not have actual or constructive knowledge that the vehicle would be used or operated in violation of any such offenses or that the owner took reasonable steps to prevent use of the vehicle by the person arrested or summonsed.

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- B. Subject to the provisions of subsection A. of this section, the interest of a lienholder in such vehicle shall not be subject to forfeiture pursuant to this article, provided, however, that this provision shall not be construed to entitle a lienholder to more than the outstanding balance of the lien. For purposes of this subsection, the term "lienholder" shall mean any person, corporation, partnership, firm, agency, association or other entity who at the time of an arrest or summoning pursuant to this article, has a financial interest recorded as a lien with the Department of Motor Vehicles of New York State or any other state, territory, district, province, nation or other jurisdiction, except that "lienholder" shall not mean an entity that leases vehicles pursuant to a written agreement subject to the New York State Personal Property Law or the Uniform Commercial Code. Nothing in this provision shall be construed to prevent a lienholder whose lien is not so recorded from intervening in any action or proceeding under this article.

§85-6. Hardship relief.

Following a determination by the court pursuant to this article that a vehicle shall be forfeited, an owner may make a motion to the court for relief from such determination. Such motion shall be made on notice to the City. In order to obtain such relief, the owner must submit evidence which establishes that the loss of the vehicle would cause a substantial and unwarranted hardship because the owner has no reasonable access to public transportation and to the use of another vehicle and lacks the financial resources to purchase or lease another vehicle and that possession of a vehicle is a necessary incident to his or her employment, business, trade, occupation or profession; or to his or her travel to and from a class or course at an accredited school, college or university or at a state approved institution of vocational or technical training; or necessary to travel to and from a necessary medical examination or necessary medical treatment for such owner or a member of his or her household. Upon satisfactory demonstration of these factors to the court, the court may grant relief from the forfeiture determination upon such terms and conditions as will provide maximum protection to the public safety, which may include, but not be limited to, installation of an ignition interlock device in such vehicle.

§85-7. Settlement of claims.

Notwithstanding any provision of law to the contrary, the Corporation Counsel shall be empowered to compromise, settle, or adjust rights, claims, demands or causes of action in favor of or against the City arising under this Chapter.

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§85-8. Disposition of forfeited vehicles.

- A. After a judicial determination of forfeiture, the Yonkers Police Department shall effect seizure of the vehicle, if such vehicle has not already been retained by the City pursuant to §85-4 of this Chapter, unless relief from such judicial determination by the court pursuant to §85-6 of this article would prevent such seizure, or the Corporation Counsel has otherwise compromised, settled or adjusted the matter pursuant to §85-7 of this Chapter, in a manner that renders such seizure unnecessary. Following such seizure, the Yonkers Police Department shall either:
- (1) retain such seized vehicle for the official use of its office, division or department; or
 - (2) transfer such seized vehicle to any City agency, department, board or commission demonstrating need for such seized vehicle, so that such seized vehicle may be put into official use by that agency, department, board or commission; or
 - (3) transfer such seized vehicle to any City-funded agency or organization demonstrating need for such seized vehicle, so that such seized vehicle may be put into use by the funded agency or organization in the regular course of business of that funded agency or organization. Any such transfer of forfeited vehicles under this subparagraph may result in an in-kind deduction from those funds paid by the City to the specific agency or organization; or
 - (4) by a public notice of at least five days, sell such forfeited property at a public sale conducted by the City Purchasing Agent.
- B. The net proceeds from any sale pursuant to subparagraph (4) of subsection A. of this section or from any compromise, settlement or adjustment by the Corporation Counsel pursuant to §85-7 of this Chapter, after deduction of the lawful expenses incurred, shall be paid into an account to be designated "Chapter 85 Forfeiture Proceeds". Monies paid into this account shall be used for the costs of the respective City departments administering the provisions of this article, including but not limited to, costs of seizing property, publication service and legal costs; any balance shall be used to fund ~~DWI~~ program initiatives in law enforcement, ~~treatment~~ and education/prevention.

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§85-9. - Public education.

The City of Yonkers shall conduct public education to advise members of the public, the judiciary, and legal community of the provisions of this article.

§85-10. Annual report.

The Yonkers Police Department shall provide a detailed annual report to the City Council on the enforcement of this article for the previous year. Such report shall include appropriate statistical analysis and comment.

§85-11. Severability.

If any clause, sentence, subparagraph, subsection or section of this article shall be held invalid by any court of competent jurisdiction, or the application of this article to any person or set of circumstances shall be held invalid, such invalidity or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subparagraph, subsection, section, or operation of this article directly involved in the controversy in which the judgment shall have been rendered. To further this end, the provisions of this article are hereby declared to be severable.

Section 2. This Local Law shall take effect upon compliance with §C4-6 of the Charter of the City of Yonkers and the provisions of the Municipal Home Rule Law of the State of New York.

THIS LOCAL LAW WAS ADOPTED BY THE CITY COUNCIL AT A STATED MEETING HELD ON TUESDAY, OCTOBER 10, 2023. BY A VOTE OF 7-0.

J. G. H. Bellamy
COUNCIL PRESIDENT

10/17/2023
DATE

SENT TO MAYOR 10/18/2023
DATE

[Signature]
MAYOR

APPROVED 10/24/23
DATE

ATTEST:

Michael Randall
DEPUTY CITY CLERK

10/24/23
DATE