

DRAFT

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
TITLE 11 OF THE SAN JOSE MUNICIPAL CODE TO ADD
A NEW CHAPTER 11.58 AUTHORIZING THE REMOVAL
OF VEHICLES THAT ILLEGALLY DUMP SOLID WASTE
OR HAZARDOUS MATERIAL ON THE PUBLIC RIGHT-OF-
WAY**

WHEREAS, the City Council finds that residents of San José have experienced public nuisances created in their neighborhoods by vehicles that are used to dump solid waste or potentially hazardous materials in their neighborhoods; and

WHEREAS, Section 9.10.545 of Chapter 9.10 of Title 9 of the San Jose Municipal Code makes it unlawful to dispose of solid waste or hazardous materials by illegal dumping on any public or private property within the City; and

WHEREAS, vehicles engaged in illegal dumping activities are a public nuisance and the seizure and forfeiture of vehicles that are used for illegal dumping will abate the nuisances caused by this activity in that the vehicles used for these purposes will no longer be available and furthermore, other persons contemplating engaging in illegal dumping will be deterred from using vehicles for these purposes; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the provisions of this Ordinance do not constitute a project, under File No. PP-17-008 (General Procedure & Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

A new Chapter 11.58 is added to Title 11 of the San José Municipal Code to be numbered, entitled, and to read as follows:

**CHAPTER 11.58
REMOVAL OF PUBLIC NUISANCE VEHICLES – ILLEGAL DUMPING**

**Part 1
Definitions**

11.58.010 Definitions.

The definitions set forth in this part shall govern the application and interpretation of this chapter.

11.58.020 Hazardous Material.

“Hazardous material” shall have the same definition as “hazardous material” given in Section 9.10.150 of Chapter 9.10 of Title 9 of the San José Municipal Code.

11.58.025 Illegal Dumping.

“Illegal dumping” shall have the same definition as “illegal dumping” given in Section 9.10.151 of Chapter 9.10 of Title 9 of the San José Municipal Code.

11.58.030 – Solid Waste.

“Solid waste” shall have the same definition as “solid waste” given in Section 9.10.280 of Chapter 9.10 of Title 9 of the San Jose Municipal Code.

Part 2

Illegal Dumping – Abatement of Nuisance Vehicle

11.58.200 – Illegal Dumping – Abatement of Nuisance Vehicle by Seizure and Forfeiture.

- A. Any vehicle used for the purpose of illegal dumping is a nuisance and the vehicle shall be subject to seizure and forfeiture as provided in this section.
- B. Any vehicle used to transport any hazardous or solid waste for the purpose of illegal dumping is a nuisance and the vehicle shall be subject to seizure and forfeiture as provided in this section.
- C. Any person or the person’s servant, agent, or employee who owns, leases, conducts or maintains any vehicle used for any of the purposes or acts set forth in this section is responsible for creating a public nuisance.

11.58.220 Title to Vest in the City.

All rights, title and interest in any vehicle described in Section 11.58.200 shall vest in the City upon commission of the act giving rise to the nuisance under this section.

11.58.240 Seizure of Vehicle.

- A. Any peace officer of the City may seize a vehicle subject to forfeiture under this section upon the issuance of an order by a court having jurisdiction of the vehicle. Seizure without court order may be made in any of the following circumstances:
1. The seizure is incident to an arrest or search under a search warrant;
 2. There is probable cause to believe the vehicle was used in violation of this section.
- B. Any peace officer of the City seizing a vehicle under this section shall complete a receipt and deliver it to the person from whose possession the vehicle was seized in accordance with Cal. Penal Code Section 1412, as may be amended or renumbered from time to time.
- C. An immediate investigation shall be made by the City making the seizure as to any potential claimant to a seized vehicle whose right, title, interest, or lien is of record in the Department of Motor Vehicles of this or any other state or appropriate federal agency. The City shall send a notice of seizure within two business days of the vehicle's seizure, to all potential claimants whose right, title, interest or lien did not arise subsequent to the date and time of seizure of the vehicle, if that person or entity was not previously given a notice of seizure.
- D. The public agency seizing the vehicle shall provide any potential claimants discovered as a result of the investigation set out in Section 11.58.240(c) with the

opportunity for a post-seizure hearing to determine the validity of the seizure. The post-seizure hearing shall be conducted within two business days of the request for the hearing. The public agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the seizure of the vehicle. Failure of the potential claimant to request or attend a scheduled hearing within the appropriate time frame shall satisfy the post-seizure requirement.

1. The notice of seizure shall include the following:
 - a) the name, address and telephone number of the agency providing the notice;
 - b) the authority and reason for the seizure;
 - c) a statement that in order to receive their post-seizure hearing, the potential claimant shall request the hearing in person, in writing, or by telephone within ten calendar days of the date of the notice; and
 - d) the time in which a claim of interest in the vehicle seized or subject to forfeiture is required to be filed.

- E. A vehicle seized pursuant to this section, where appropriate may be held as evidence in any proceeding brought by the City Attorney or District Attorney.

11.58.260 Forfeiture and Notice of Intended Forfeiture.

- A. The City Attorney may, pursuant to this section, order the forfeiture of vehicles seized under this section.

- B. If the City Attorney determines that the factual circumstances warrant forfeiture of the vehicle described in Section 11.58.240, the City Attorney shall serve a notice of intended forfeiture upon any person who has an interest in the seized vehicle. The notice shall be served as soon as practicable, but in any event within 30 calendar days of the seizure of the vehicle subject to forfeiture.
- C. The notice of intended forfeiture shall be served as follows:
1. By personal delivery or certified mail, return receipt requested, upon any person who has an interest in the seized vehicle as determined pursuant to Section 11.58.240(c).
 2. In the event that the person entitled to service refuses to accept certified return receipt mail or cannot be personally served, service may be made by substituted service. Substituted service may be accomplished by any one of the following methods:
 - a) By leaving a copy during usual business hours at the recipient's business with the person who is apparently in charge, and by thereafter mailing by first class mail a copy to the recipient where the copy was left;
 - b) By leaving a copy at the recipient's dwelling or usual place of residence, in the presence of a competent member of the household and thereafter mailing by first class mail a copy to the recipient at the address where the copy was left.

3. If the person entitled to service lives out of state and will not accept certified return receipt mail, then service may be made by first class mail.
4. If the person entitled to notice cannot be located, or service cannot be effected as set forth in this subsection, service may be made by publication in a City of San Jose newspaper of general circulation. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063, as it may be amended or renumbered from time to time.

11.58.280 Claim Opposing Forfeiture and Court Proceedings

- A. A person claiming an interest in the vehicle seized pursuant to Section 11.58.240 must within ten calendar days from the date of the notice of intended forfeiture or within 30 calendar days from the date of first publication of the notice of intended forfeiture, file with the Superior Court of the county in which the vehicle was seized, a Claim Opposing Forfeiture, verified in accordance with Section 446 of the Code of Civil Procedure, stating their interest in the vehicle. An endorsed copy of the claim shall be served upon the City Attorney within ten calendar days of the filing of the claim.
- B. If a verified claim is filed in accordance with this section, the forfeiture proceeding shall be set for hearing within 30 calendar days from the date the claim is filed with the court. The City Attorney shall file a petition for forfeiture with the court within ten calendar days of service of the claim upon the City Attorney. A copy of the petition shall be served upon the claimant.
- C. The hearing shall be before the Superior Court of Santa Clara County. The provisions of the Code of Civil Procedure shall apply to proceedings under this

section unless otherwise inconsistent with the provisions or procedures set forth in this section. However, in proceedings under this section, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this section. Trial shall be by court or jury.

- D. With respect to vehicles described in Section 11.58.240 for which forfeiture is sought and as to which forfeiture is contested, the City Attorney shall have the burden of proving by a preponderance of the evidence that the vehicle was used as set forth in Section 11.58.240.
- E. Upon proof that the vehicle was used for any of the purposes set forth in Section 11.58.240, the court shall declare the vehicle a nuisance and order that the vehicle be forfeited, sold, and the proceeds distributed as set forth in Section 11.58.300. The court may make a different distribution of the proceeds, if the court finds that the claimant did not know that the vehicle was used for a purpose that constitutes a violation of this section.
- F. If no claims are timely filed, the City Attorney shall prepare a written declaration of forfeiture of the vehicle to the City. A written declaration of forfeiture signed by the City Attorney under this section shall be deemed to provide good and sufficient title to the forfeited vehicle. The proceeds from the disposal of the vehicle declared forfeited by the City Attorney shall be distributed in accordance with Section 11.58.300. The City Attorney ordering forfeiture pursuant to this section shall provide a copy of the declaration of forfeiture to any person who received notice of the forfeiture proceedings.

11.58.300 Disposal of Vehicle and Distribution of Proceeds.

A. In all cases where vehicles seized pursuant to this section are forfeited to the City, the vehicles shall be sold, or if cash is paid as settlement in lieu of forfeiture of the vehicle, the proceeds of sale or settlement shall be distributed and appropriated as follows:

1. To pay costs associated with the towing, storage and release of any vehicle seized under this section.
2. To pay costs associated with the sale of the vehicle.
3. To the lien holder of the vehicle, if any, up to the amount of the lien holder's interest in the vehicle.

B. The remaining funds shall be distributed as follows:

1. To the City Attorney for all expenditures other than personnel costs, made or incurred by the Office in connection with the enforcement of this section, including but not limited to, costs for equipment, investigation, supplies, litigation, insurance and liability resulting from enforcement of this section and costs of publication of the notices set forth in Section 11.58.260.
2. To local law enforcement for all expenditures other than personnel costs, made or incurred by the Department in connection with enforcement of this section, including but not limited to, costs for equipment, investigation and supplies related to enforcement of this section.
3. To the general fund.

- C. For budgeting purposes, funds attributable to this ordinance shall not be considered anticipated revenue into the general fund.

11.58.320 Stolen Vehicles.

A vehicle that has been reported stolen, prior to a seizure under this section shall not be subject to forfeiture unless the identity of the registered owner cannot be reasonably ascertained or the registered owner fails to redeem the vehicle within 60 days of the seizure. The registered owner of the vehicle may claim the vehicle upon payment of tow, storage and release charges, provided the vehicle is not subject to any holds for traffic or parking violations and the vehicle registration is current.

11.58.340 Recovery of Monetary Loss.

Nothing in this section shall preclude an owner of a vehicle who suffers a monetary loss from the forfeiture of a vehicle under this section from recovering the amount of the actual monetary loss from the person who committed the act giving rise to forfeiture under this section.

PASSED FOR PUBLICATION of title this _____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk