

**TOWN OF PIERCE, COLORADO
ORDINANCE NO. 2022-06**

**AN ORDINANCE AMENDING CERTAIN MODIFICATIONS
AND ADDITIONS TO THE 2020 MODEL TRAFFIC CODE**

WHEREAS, the Town of Pierce (the "Town") has previously adopted Ordinance No. 2020-05 – An Ordinance for the Regulation of Traffic by the Board of Trustees of the Town of Pierce, Colorado, Adopting by Reference the 2020 Edition of the "Model Traffic Code," Repealing all Ordinances in Conflict Therewith; and Providing Penalties for Violation Thereof; and

WHEREAS, the Town of Pierce has previously adopted Ordinance No. 2022-01 – An Ordinance Adopting Certain Modifications and Additions to the 2020 Model Traffic Code, which included additions related to: (i) expired license plates, registration, and/or temporary permits; and (ii) driving without a current valid driver's license (the "Registration and License Provisions"); and

WHEREAS, the Board of Trustees has determined that it is in the best interest of the Town to decriminalize the Registration and License Provisions that were added to the Town Code by Ordinance No. 2022-01, so that violations of these provisions shall be noncriminal traffic offenses subject to a fine; and

WHEREAS, the Board of Trustees desires to amend Article 1, Chapter 8 of the Pierce Town Code to include the following additions and modifications from 2020 edition of the Model Traffic Code:

Section 8-1-30. – Amendments

(a) The 2020 edition of the Model Traffic Code is adopted as if set out at length save and except the following Articles and/or Sections which are declared to be inapplicable to this municipality and are therefore expressly deleted: None.

(b) The said adopted code is subject to the following additions or modifications:

1. Section 1417. Expired license plates/registration/temporary permit.

- i. The registration issued by the State of Colorado shall expire on the last day of the month at the end of each twelve-month registration period and shall be renewed, upon application by the owner, the payment of the fees required by law, and in accordance with section 42-3-113 (3), not later than the last day of the month following the date of expiration. No license plates other than those of the registration period to which they pertain shall be displayed on a motor vehicle operated on any street, road, or highway within the Town.

- ii. No person shall lend to or knowingly permit the use by one not entitled thereto any certificate of title, registration card, or registration number plate issued to the person so lending or permitting the use thereof.
- iii. A temporary vehicle registration may not be used on any vehicle after the expiration of the period for which the permit was issued.

2. Section 1418. Driving without a current valid driver's license.

- i. No person shall drive any motor vehicle upon a street, road or highway within the Town unless such person has been issued a currently valid driver's or minor driver's license or an instruction permit by a State Department of Motor Vehicles.
- ii. No person shall drive any motor vehicle upon a street, road or highway within the Town unless such person has in his or her immediate possession a current driver's or minor driver's license or an instruction permit issued by a State Department of Motor Vehicles.
- iii. No person who has been issued a currently valid driver's or minor driver's license or an instruction permit shall drive a type or general class of motor vehicle upon a street, road or highway within the Town for which such person has not been issued the correct type or general class of license or permit.
- iv. No person who has been issued a currently valid driver's or minor driver's license or an instruction permit shall operate a motor vehicle upon a street, road or highway within the Town without having such license or permit in such person's immediate possession.
- v. A charge of a violation of subsection (4) of this section shall be dismissed by the court if the defendant elects not to pay the penalty assessment and, at or before the defendant's scheduled court appearance, exhibits to the court a currently valid driver's or minor driver's license issued to such person or an officially issued duplicate thereof if the original was lost, stolen or destroyed; provided that such currently valid driver's license or minor driver's license shall also have been valid on the date the defendant was issued the citation.
- vi. The conduct of a driver of a motor vehicle which would otherwise constitute a violation of this section is justifiable and not unlawful when:
 - a. It is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no conduct of said driver and which is of sufficient gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by this Section; or

- b. The applicable conditions for exemption, as set forth in § 42-2-102, C.R.S., exist.
- vii. The issue of justification or exemption is an affirmative defense. As used in this subsection, affirmative defense means that, unless the prosecutor's evidence raises the issue involving the particular defense, the defendant, to raise the issue, shall present some credible evidence on that issue. If the issue involved in an affirmative defense is raised, then the liability of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the charge.

3. **Section 1417 and 1418 Offenses Classified – Schedule of Fines.** Any person who violates any provision of Section 1417 or Section 1418 shall be deemed to have committed a noncriminal traffic offense. Every person who is convicted of, who admits liability for, or against whom a judgment is rendered, shall be penalized by the imposition of a fine in an amount not less than \$5.00 and not greater than \$500.00. The presiding Judge of the Municipal Court shall promulgate a schedule of penalties for all noncriminal traffic offenses. Said schedule shall be prominently posted in the office of the Municipal Court Clerk.

4. **Procedure for noncriminal traffic offenses.**

- i. Notwithstanding the provisions of Rule 223(a) and (b) of the Colorado Municipal Court Rules of Procedure, or any other provisions of law, the right of a jury trial shall not be available at a hearing where the cited person is charged with a noncriminal traffic offense. In addition, no person charged with a noncriminal traffic offense shall be afforded the right of court-appointed counsel.
- ii. The Colorado Municipal Court Rules of Procedure shall apply to any hearing where the cited person is charged with a noncriminal traffic offense, unless any of the rules are clearly inapplicable. The burden of proof shall be upon the people, and the court shall dismiss any charges against an alleged violation beyond a reasonable doubt.
- iii. An appeal from a final judgment of a noncriminal traffic offense shall be made in accordance with Rule 237 of the Colorado Municipal Court Rules of Procedure.
- iv. Except as otherwise provided in this subsection, no person against whom a judgment has been entered for a noncriminal traffic offense shall collaterally attack the validity of that judgment unless such attack is commenced within three months after the date of entry of the judgment. The only exceptions to the time limitations shall be:
 - i. A case in which the court entering judgment did not have jurisdiction over the subject matter of the alleged infraction;

- ii. A case in which the court entering judgment did not have jurisdiction over the person of the violator;
 - iii. Where the court finds by a preponderance of the evidence that the failure to seek relief within the applicable time period was caused by an adjudication of incompetence or by commitment of the violator to an institution for treatment as a mentally ill person; or
 - iv. Where the court finds that the failure to seek relief within the applicable time period was the result of circumstances amounting to justifiable excuse or excusable neglect.
- v. At any time that a person is cited for the commission of any noncriminal traffic offense, the citing officer shall give a notice to the person in charge of or operating the motor vehicle involved, which notice shall be in the form of a penalty assessment notice.
- vi. The penalty assessment notice tendered by the citing officer shall contain the name and address of such person or, if the vehicle is unattended, the owner of the vehicle shall be presumed to be such person, the license number of the vehicle involved, if any, the number of such person's driver's license, if available, the nature of the offense, the amount of the penalty prescribed for such offense, the date of the notice, the time and place and when and where such person shall appear in court in the event such penalty is not paid, and a place for such person to execute a signed acknowledgment of liability and an agreement to pay the penalty prescribed within twenty days, as well as such other information as may be required by law to constitute such notice as a summons and complaint to appear in court, should the prescribed penalty not be paid within the time period.
- vii. One copy of the notice shall be given to the violator by the citing officer.
- viii. The time specified in the notice to appear shall be at least fourteen days, but not more than forty-five days after such citation, unless the person cited shall demand an earlier hearing.
- ix. Whenever the alleged violator refuses to sign or accept the penalty assessment notice, tender of such notice by the citing officer to the alleged violator shall constitute service of a summons and complaint.
- x. In the event a person who has been cited for a noncriminal traffic offense fails to pay the penalty assessment within the time period specified in the penalty assessment notice, he shall make an appearance and answer the complaint against him. If the alleged violator answers that he is liable, judgment shall be entered against him, and he shall be assessed the appropriate penalty and applicable court costs. If the alleged violator denies the allegations in the complaint, a final hearing on the complaint shall be held within the time period prescribed in Rule 248 of the Colorado Municipal Court Rules of Procedure. If the alleged violator fails to appear for a final hearing, judgment shall be entered

against him, and he shall be assessed the appropriate penalty and applicable court costs.

- xi. In the event a person who has been cited for a noncriminal traffic offense fails to pay the penalty assessment within the time period specified in the penalty assessment notice and fails to appear at the time and place specified in the notice, judgment shall be entered against him, and he shall be assessed the appropriate penalty and court costs.
- xii. A police officer coming upon an unattended vehicle which is in apparent violation of any provision of the Model Traffic Code may place upon the vehicle a penalty assessment notice indicating the noncriminal traffic offense pursuant to the procedure set forth at Subsection (vi) above. If the penalty assessment is not paid within twenty days of the issuance of such notice, the court shall mail a notice to the registered owner of the vehicle, setting forth the noncriminal traffic offense, the time and place where it occurred, directing the payment of the penalty assessment within twenty days from the issuance of the notice, and the time and place and when and where such person shall appear in court in the event such penalty is not paid as provided in the initial penalty assessment notice. In any prosecution of any of the provisions governing unattended vehicles, proof that the particular vehicle described in the penalty assessment notice was left unattended in violation of any such law or regulation, together with proof that the defendant named in the penalty assessment notice was, at the time of violation, the registered owner of such vehicle, shall constitute in evidence a prima facie rebuttable presumption that the registered owner of such vehicle was the person who left the vehicle unattended at the place where, and for the time during which, such violation occurred.
- xiii. If the alleged violator is cited for a noncriminal traffic offense, he shall be privileged to answer the complaint made against him in the manner provided in the Colorado Municipal Court Rules of Procedure. The maximum penalty which may be imposed shall not exceed the penalty set forth in the penalty assessment notice.

NOW, THEREFORE BE IT ORDAINED by the Board of the Town of Pierce, Colorado::

Section 1 – Amendment of Section 8-1-30. Section 8-1-30 of the Pierce Town Code is repealed and reenacted to read as follows:

Section 8-1-30. – Amendments

(a) The 2020 edition of the Model Traffic Code is adopted as if set out at length save and except the following Articles and/or Sections which are declared to be inapplicable to this municipality and are therefore expressly deleted: None.

(b) The said adopted code is subject to the following additions or modifications:

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- iii. No person who has been issued a currently valid driver's or minor driver's license or an instruction permit shall drive a type or general class of motor vehicle upon a street, road or highway within the Town for which such person has not been issued the correct type or general class of license or permit.
- iv. No person who has been issued a currently valid driver's or minor driver's license or an instruction permit shall operate a motor vehicle upon a street, road or highway within the Town without having such license or permit in such person's immediate possession.
- v. A charge of a violation of subsection (4) of this section shall be dismissed by the court if the defendant elects not to pay the penalty assessment and, at or before the defendant's scheduled court appearance, exhibits to the court a currently valid driver's or minor driver's license issued to such person or an officially issued duplicate thereof if the original was lost, stolen or destroyed; provided that such currently valid driver's license or minor driver's license shall also have been valid on the date the defendant was issued the citation.

vi. The conduct of a driver of a motor vehicle which would otherwise constitute a violation of this section is justifiable and not unlawful when:

a. It is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no conduct of said driver and which is of sufficient gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by this Section; or

b. The applicable conditions for exemption, as set forth in § 42-2-102, C.R.S., exist.

vii. The issue of justification or exemption is an affirmative defense. As used in this subsection, affirmative defense means that, unless the prosecutor's evidence raises the issue involving the particular defense, the defendant, to raise the issue, shall present some credible evidence on that issue. If the issue involved in an affirmative defense is raised, then the liability of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the charge.

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ii. The Colorado Municipal Court Rules of Procedure shall apply to any hearing where the cited person is charged with a noncriminal traffic offense, unless any of the rules are clearly inapplicable. The burden of proof shall be upon the people, and the court shall dismiss any charges against an alleged violation beyond a reasonable doubt.

- iii. An appeal from a final judgment of a noncriminal traffic offense shall be made in accordance with Rule 237 of the Colorado Municipal Court Rules of Procedure.
- iv. Except as otherwise provided in this subsection, no person against whom a judgment has been entered for a noncriminal traffic offense shall collaterally attack the validity of that judgment unless such attack is commenced within three months after the date of entry of the judgment. The only exceptions to the time limitations shall be:
 - i. A case in which the court entering judgment did not have jurisdiction over the subject matter of the alleged infraction;
 - ii. A case in which the court entering judgment did not have jurisdiction over the person of the violator;
 - iii. Where the court finds by a preponderance of the evidence that the failure to seek relief within the applicable time period was caused by an adjudication of incompetence or by commitment of the violator to an institution for treatment as a mentally ill person; or
 - iv. Where the court finds that the failure to seek relief within the applicable time period was the result of circumstances amounting to justifiable excuse or excusable neglect.
- v. At any time that a person is cited for the commission of any noncriminal traffic offense, the citing officer shall give a notice to the person in charge of or operating the motor vehicle involved, which notice shall be in the form of a penalty assessment notice.
- vi. The penalty assessment notice tendered by the citing officer shall contain the name and address of such person or, if the vehicle is unattended, the owner of the vehicle shall be presumed to be such person, the license number of the vehicle involved, if any, the number of such person's driver's license, if available, the nature of the offense, the amount of the penalty prescribed for such offense, the date of the notice, the time and place and when and where such person shall appear in court in the event such penalty is not paid, and a place for such person to execute a signed acknowledgment of liability and an agreement to pay the penalty prescribed within twenty days, as well as such other information as may be required by law to constitute such notice as a summons and complaint to appear in court, should the prescribed penalty not be paid within the time period.
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- xiii. If the alleged violator is cited for a noncriminal traffic offense, he shall be privileged to answer the complaint made against him in the manner provided in the Colorado Municipal Court Rules of Procedure. The maximum penalty which may be imposed shall not exceed the penalty set forth in the penalty assessment notice.

Section 2. Severability. Should any one or more sections or provisions of this Ordinance or of any of the primary or secondary codes adopted by reference be judicially determined invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance or the codes adopted by reference hereby, the intention being that the various sections and provisions are severable.

Section 3. Repeal. Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

Section 4. Effective Date. Except as otherwise expressly provided herein, this ordinance shall take effect thirty days after its publication in the manner provided by law.

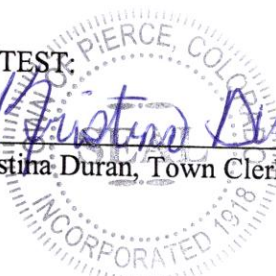
PASSED, ADOPTED AND APPROVED THIS 12th day of September, 2022.

TOWN OF PIERCE

By: Julie Lukela
Julie Lukela, Mayor

ATTEST:

Kristina Duran
Kristina Duran, Town Clerk



SENT FOR PUBLICATION

DATE: 9/15/2022

BY: KRD