HOUSE DOCKET, NO. 4292 FILED ON: 2/3/2012

HOUSE . . . . . No. 4072

[LOCAL APPROVAL RECEIVED.]

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to drag racing ordinances in the city of Chelsea.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Eugene L. O'Flaherty	*2nd Suffolk*

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By Mr. O'Flaherty of Chelsea, a petition (subject to Joint Rule 12) of Eugene L. O'Flaherty (with the approval of the city council) relative to drag racing in the city of Chelsea. Transportation. [Local Approval Received.]

The Commonwealth of Massachusetts

An Act relative to drag racing ordinances in the city of Chelsea.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section X-XX. DRAG RACING

A. PURPOSE

The purpose of this ordinance is to protect the health, safety, and welfare of the general public from the nuisance, crime, accidents and negative health effects created by drag racing within the community. The City Council of the City Chelsea has determined that drag racing constitutes a threat to public safety, is a public nuisance and increases criminal activity. The City Council of the City of Chelsea has further found that the cost related to enforcement against the increased criminal activity is burdensome to city resources and creates a negative impact on the community as a whole.

B. IMPOUNDMENT OF MOTOR VEHICLE.

Notwithstanding Section 17B of Chapter 90 of the General Laws or any other general or special law to the contrary, the State Police and the Chelsea Police Department may impound any motor vehicle used in the City of Chelsea by an owner or operator to accelerate at a high rate of speed in competition with another operator, whether or not there is an agreement to race, whether or not there is increased noise from skidding tires or amplified noise from racing engines, so-called drag racing, until such time as a forfeiture hearing can be heard in the manner set forth in Sections C and D of this ordinance..

C. FORFEITURE

(1) The following items shall be subject to forfeiture:

(a) Any motor vehicle used or intended to be used to violate Section 17B of Chapter 90 of the General Laws or used to facilitate a violation of said Section 17B of said Chapter 90 in

the City of Chelsea, but no forfeiture under this act shall extinguish a perfected security interest held by a creditor in a motor vehicle at the time of filing of the forfeiture action; and

(b) any money, negotiable instrument, securities or other thing of value furnished or intended to be furnished in exchange for violating said Section 17B of said Chapter 90 or for facilitating a violation of said Section 17B of said Chapter 90 in the City of Chelsea.

(2) The following exemptions shall apply:

(a) no motor vehicle used as a common carrier in the transaction of business as a common carrier shall be subject to forfeiture, unless the owner or other person lawfully in charge of such motor vehicle consented to or participated or intended to participate in the violation or facilitation of a violation of Section 17B of Chapter 90 of the General Laws:

(b) no motor vehicle used or intended to be used to violate said Section 17B of said Chapter 90 or to facilitate a violation of said Section 17B of said Chapter 90 shall be subject to forfeiture by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such motor vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, the commonwealth or any state; and

(c) no motor vehicle shall be subject to forfeiture unless the owner knew or should have knows that such motor vehicle was used or intended to be used to violate or to facilitate a violation of said Section 17B of said Chapter 90.

D. CIVIL ACTION

The Suffolk County Superior Court shall have jurisdiction under any action brought pursuant to this act.

The City may petition the Superior Court in the name of the city in the nature of a proceeding in rem to order forfeiture of a motor vehicle, money or other things of value subject to forfeiture under Section C (1) (a) and (b) of this ordinance. Such proceeding shall be deemed a civil suit. Any person claiming a right in the property subject to forfeiture shall have the right to claim a trial by jury, but if such right is not claimed, the right to a trial by jury shall be waived. In all such suits where the property is claimed by any person other than the City, the City shall have the burden or proving the existence of probable cause to institute the action, and any such claimant shall then have the burden or proving that the property is not forfeitable pursuant to Section C. The court shall order the city to give notice by certified mail to the owner of the motor vehicle, moneys or other things of value and to other persons who appear to have an interest therein, and the court shall promptly hold a hearing on the petition. Upon motion of the owner of said motor vehicle, moneys or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of Section 17B

of Chapter 90 of the General Laws, and upon a finding of not guilty, the court shall dismiss the forfeiture petition. At such forfeiture hearing the court shall hear evidence and, if no jury has been requested, make findings of fact and conclusions of law, and shall thereupon issue a final order, from which the parties shall have such right of appeal as is provided by law. In all such suits where a final order results in a forfeiture, said final order shall provide for disposition of the motor vehicle, moneys or other things of value by the City in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency; or by sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, and the balance thereof shall be deposited in the general fund of the City pursuant to Section 53 of Chapter 44 of the General Laws and shall be appropriated to the police department.

E. PENALTIES

Whoever violates section 17B of Chapter 90 of the General Laws in the City of Chelsea shall, in addition to forfeiture of the motor vehicle as set forth in Section C, also be punished by a fine of not less that $500 nor more than $1,000, and the registrar shall suspend such operator's license for a period of not less than 60 days. A Subsequent violation shall be punished by a fine of not less that $2,000 nor more than $5,000 and a suspension of such license for a period of not less than 6 months.

F. EFFECTIVE DATE

This act shall take effect upon its passage.