

# CITY of ALBUQUERQUE

## TWENTY-FIRST COUNCIL

COUNCIL BILL NO. O-14-17 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Diane Gibson

1 **ORDINANCE**

2 **AMENDING CHAPTER SEVEN, ARTICLE SIX OF THE REVISED ORDINANCES OF**  
3 **ALBUQUERQUE RELATING TO SEIZURES AND FORFEITURES OF CERTAIN**  
4 **NUISANCE MOTOR VEHICLES**

5 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**  
6 **ALBUQUERQUE:**

7 **SECTION 1. FINDINGS AND INTENT.**

8 **(A) The City Council finds that nuisance vehicles seized under the City's DWI**  
9 **seizure program present a resource for effectuating important law enforcement**  
10 **activities such as providing bait cars for anti-vehicle theft programs and**  
11 **executing warrants.**

12 **(B) The City Council finds that these amendments will help promote the**  
13 **health, safety, and welfare of the community by providing resources for law**  
14 **enforcement efforts while remaining consistent with the primary nuisance**  
15 **abatement purposes of this Article.**

16 **(C) The intent of these amendments are to clarify that (i) vehicles shall not**  
17 **be seized upon a first offense, (ii) to clearly authorize the Albuquerque Police**  
18 **Department to utilize vehicles forfeited under this program for limited purpose of**  
19 **carrying out official law enforcement activities, and to (iii) adopt non-substantive**  
20 **changes that help clarify the Article's intent with respect to considerations to be**  
21 **made by the hearing officer.**

22 **SECTION 2. SECTION 7-6-2 IS HEREBY AMENDED AS FOLLOWS:**

23 **"§ 7-6-2 VEHICLE NUISANCE.**

24 **A motor vehicle is hereby declared to be a nuisance and subject to**  
25 **immediate seizure and forfeiture pursuant to the provisions of this article if it is:**

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1 (A) Operated by a person who has~~[, on at least one prior occasion,]~~ been  
2 arrested for an offense of driving under the influence of intoxicating liquor or  
3 drugs, and/or

4 (B) Operated by a person whose license is suspended or revoked as a  
5 result of conviction for driving while intoxicated or suspended or revoked as a  
6 result of a driving while intoxicated arrest.”

7 SECTION 3. SECTION 7-6-5 IS HEREBY AMENDED AS FOLLOWS:

8 “§ 7-6-5 SEIZURE; FORFEITURE PROCEEDING.

9 (A) Motor vehicles subject to forfeiture under this article may be seized by  
10 any police officer of the city upon an order issued by the district court.

11 (B) Seizure without such an order may be made if seizure is incident to an  
12 arrest of the driver of the vehicle for driving while intoxicated and/or driving  
13 while his or her license is suspended or revoked as a result of a driving while  
14 intoxicated arrest.

15 (C) A vehicle seized under this article shall not be subject to replevin, but is  
16 deemed to be in the custody of the Police Department seizing it subject only to  
17 the orders and decrees of the district court. The police officer may take  
18 custody of the vehicle and remove it to an appropriate and official location  
19 within the district court's jurisdiction for disposition in accordance with this  
20 article.

21 (D) Immediately after a vehicle is towed for seizure or forfeiture under § 7-6-  
22 2, the arresting officer will serve a copy of the Notice of Forfeiture to the  
23 individual whom the vehicle was seized from at the time of arrest. A copy of the  
24 Notice of Forfeiture will be mailed postage pre-paid to the lawfully registered  
25 owner as verified by the New Mexico Motor Vehicle Division by the municipal  
26 employee who is retaining the vehicle in order to notify the owner of the  
27 pending forfeiture. The notice shall contain information to be designated by the  
28 City Attorney's Office, Legal Department, which shall include the following:

- 29 (1) The license plate number, make, type and color of the vehicle;  
30 (2) The location the vehicle was seized from;  
31 (3) A statement that the vehicle has been taken into custody and  
32 stored;

- 1 (4) The reason for seizure;
- 2 (5) A name and phone number or title of municipal employee from
- 3 whom the owner can obtain further information;
- 4 (6) A statement that storage charges will be assessed in addition to a
- 5 towing charge;
- 6 (7) A statement that the owner has the right to contest the validity of
- 7 the impoundment by requesting a hearing in writing within ten days of the date
- 8 of mailing of the Notice of Forfeiture;
- 9 (8) Copy of § 7-6-1, et seq., ROA 1994.

10 The owner may request a hearing be scheduled by the city hearing officer.  
11 The hearing, if requested within the period set forth above, shall be conducted  
12 by the City Hearing Officer, as defined by the Independent Office of Hearings  
13 Ordinance (§§ 2-7-8-1 et seq. ROA 1994). The hearing shall be held and the  
14 hearing officer shall prepare a written decision within 20 working days  
15 (excluding weekends and holidays) of receipt of the request unless the hearing  
16 is continued with the agreement of the parties. The hearing shall be informal  
17 and not bound by the technical rules of evidence. The City Hearing Officer shall  
18 [only] determine whether the law enforcement officer had probable cause to  
19 seize the vehicle [or the defenses authorized under Section 7-6-7 of this  
20 Ordinance]. The city hearing officer shall mail written notice of his decision to  
21 the owner within two working days of the hearing. If the city hearing officer  
22 finds that the law enforcement officer did not have probable cause to seize the  
23 vehicle in question or that the vehicle should otherwise be released, he shall [(i)  
24 refund the \$50 hearing fee required by subsection 'F' below, and (ii)] issue and  
25 date a Certificate of Release, a copy of which shall be given to the owner of the  
26 vehicle. Upon receipt of the owner's copy of such certificate, the city shall  
27 release the vehicle to its owner or the owner's agent, and storage fees shall be  
28 waived. If the owner fails to present such certificate to the municipal employee  
29 having custody of the vehicle within 24 hours of its receipt, excluding days  
30 when the DWI Forfeiture Office is not open for business, the owner shall  
31 assume liability for all subsequent storage charges. The certificate shall advise  
32 the owner of such requirement. If the City Hearing Officer determines that the

1 vehicle was properly seized, proceedings for an order for forfeiture shall be  
2 instituted promptly. In the event of seizure pursuant to division (B) of this  
3 section, proceedings for an order for forfeiture shall be instituted. Any person  
4 or entity who, pursuant to the records of the Motor Vehicle Division of the State  
5 Taxation and Revenue Department, has an ownership or security interest in the  
6 subject matter vehicle shall be served with notice of the forfeiture proceedings.

7 (E) When property is forfeited pursuant to this article, the Police  
8 Department shall sell the motor vehicle, and the proceeds shall be used to carry  
9 out the purpose and intent of this ordinance. [The vehicle may be used by the  
10 Police Department for official law enforcement purposes prior to sale.] Any  
11 proceeds that exceed the costs of administering this ordinance shall be used for  
12 DWI enforcement, prevention and education. Any vehicle not recovered by the  
13 owner within 30 days after being notified by the city that such vehicle has been  
14 released by the city shall be deemed abandoned and disposed of in accordance  
15 with the notice provisions of Section 29-1-14, NMSA 1978. Any proceeds from  
16 the sale of abandoned vehicles seized pursuant to this ordinance shall be used  
17 to carry out the purpose and intent of this ordinance.

18 (F) A hearing fee of \$50.00 shall accompany each request for hearing with  
19 the city hearing officer made pursuant to this section.

20 SECTION 3. SECTION 7-6-7 IS HEREBY AMENDED AS FOLLOWS:

21 “§ 7-6-7 PROPERTY INTEREST NOT SUBJECT TO FORFEITURE.

22 Notwithstanding § 7-6-4 any forfeiture shall be subject to the interest of:

23 (A) Any owner or co-owner of the vehicle who [either (1)] did not [have  
24 knowledge of nor] consent[ed] to, the use of the vehicle by the driver who  
25 caused the vehicle to become a nuisance, [or (2) did not have knowledge, or  
26 could not have reasonably anticipated, that the vehicle would be used in a  
27 manner constituting the nuisance described by this ordinance,] provided that  
28 upon establishment of a prima facie case of lack of knowledge or consent by  
29 the owner or co-owner, the burden of proving knowledge and consent shall be  
30 upon the city; or,

31 (B) Any secured party, to the extent of the security interest, if the secured  
32 party proves that the security interest was acquired in good faith with no

1 knowledge or reason to believe that the vehicle would be used by the driver  
2 whose license has been suspended or revoked. If the security interest is greater  
3 than the value of the vehicle, title shall be transferred to the secured party upon  
4 motion to the district court. Any secured party acquiring an interest after the  
5 vehicle is in the custody of the police department shall have the burden of  
6 intervening in the forfeiture proceeding to protect such interest. Any interest in  
7 the vehicle must be properly filed with the New Mexico Motor Vehicle  
8 Department in accordance with Sections 66-3-201 and 66-3-202 NMSA 1978  
9 before the date of incident leading to the seizure.

10 [(C) No owner or co-owner may make use of the defense contained in  
11 subparagraph (A) of this section if the records of the New Mexico Motor Vehicle  
12 Division show that such owner or co-owner acquired ownership of the vehicle  
13 after the date of the seizure at issue by law enforcement. The date of  
14 application for vehicle registration on the vehicle's MVD registration application  
15 form shall be the earliest recorded document governing the date at which the  
16 owner or co-owner acquired ownership of the vehicle.

17 (D) If the District Court finds that the law enforcement officer had probable  
18 cause to seize the vehicle, the tow charge paid by the City to seize the vehicle  
19 shall be ordered assessed against any owner with payment of said charge to be  
20 made upon the City prior to the vehicle's release. Reasonable storage fees may  
21 be assessed by the District Court in addition to the tow charge.]”

#### 22 SECTION 4. SEVERABILITY CLAUSE

23 If any section, paragraph, sentence, clause, word or phrase of this ordinance  
24 amendment is for any reason held to be invalid or unenforceable by any court of  
25 competent jurisdiction, such decision shall not affect the validity of the  
26 remaining provisions. The Council hereby declares that it would have passed  
27 this ordinance amendment and each section, paragraph, sentence, clause, word  
28 or phrase thereof irrespective of any provisions being declared unconstitutional  
29 or otherwise invalid.

30 SECTION 5. COMPILATION. Sections 2 and 3 of this ordinance shall  
31 amend, be incorporated in and made part of the Revised Ordinances of  
32 Albuquerque, New Mexico, 1994.

1        SECTION 6.        EFFECTIVE DATE.    This ordinance shall take effect five  
2    days after publication by title and general summary.

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