

CITY of ALBUQUERQUE

TWENTY-FIRST COUNCIL

COUNCIL BILL NO. C/S 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**
6 **OF 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.**

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 A motor vehicle[, as defined by the State Motor Vehicle Code, NMSA 1978
2 § 66-1-4.11,] is hereby declared to be a nuisance and subject to immediate
3 seizure and forfeiture pursuant to the provisions of this article if it is:

4 (A) Operated by a person [~~who has been arrested for an offense of driving~~
5 ~~under the influence of intoxicating liquor or drugs in the commission of a DWI~~
6 offense [NMSA 1978 § 66-8-102] and has, on at least one prior occasion, been
7 arrested, summonsed or convicted for (i) an offense of driving under the
8 influence of an intoxicating liquor or drugs in any jurisdiction, or (ii) Homicide by
9 vehicle or great bodily harm by vehicle [NMSA 1978 § 66-8-101] while under
10 the influence of intoxicating liquor or while under the influence of any drug],
11 and/or

12 (B) Operated by a person whose license is suspended or revoked as a
13 result of conviction for driving while intoxicated or suspended or revoked as a
14 result of a driving while intoxicated arrest.

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

16 "§ 7-6-5 SEIZURE; FORFEITURE PROCEEDING.

17 (A) Motor vehicles subject to forfeiture under this article may be seized by
18 any [~~police~~ law enforcement] officer [~~of~~ with jurisdiction in] the city upon an
19 order issued by the district court.

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

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

30 (D) Immediately after a vehicle is towed for seizure or forfeiture under § 7-6-
31 2, the arresting officer will serve a copy of the Notice of Forfeiture to the
32 individual whom the vehicle was seized from at the time of arrest. A copy of the

1 Notice of Forfeiture will be mailed postage pre-paid to the lawfully registered
2 owner as verified by the New Mexico Motor Vehicle Division by the municipal
3 employee who is retaining the vehicle in order to notify the owner of the
4 pending forfeiture. The notice shall contain information to be designated by the
5 City Attorney's Office, Legal Department, which shall include the following:

- 6 (1) The license plate number, make, type and color of the vehicle;
- 7 (2) The location the vehicle was seized from;
- 8 (3) A statement that the vehicle has been taken into custody and
9 stored;
- 10 (4) The reason for seizure;
- 11 (5) A name and phone number or title of municipal employee from
12 whom the owner can obtain further information;
- 13 (6) A statement that storage charges will be assessed in addition to a
14 towing charge;
- 15 (7) A statement that the owner has the right to contest the validity of
16 the impoundment by requesting a hearing in writing within ten days of the date
17 of mailing of the Notice of Forfeiture;
- 18 (8) Copy of § 7-6-1, et seq., ROA 1994.

19 The owner may request a hearing be scheduled by the city hearing officer.
20 The hearing, if requested within the period set forth above, shall be conducted
21 by the City Hearing Officer, as defined by the Independent Office of Hearings
22 Ordinance (§§ 2-7-8-1 et seq. ROA 1994). The hearing shall be held and the
23 hearing officer shall prepare a written decision within 20 working days
24 (excluding weekends and holidays) of receipt of the request unless the hearing
25 is continued with the agreement of the parties. The hearing shall be informal
26 and not bound by the technical rules of evidence. The City Hearing Officer shall
27 [only] determine whether the law enforcement officer had probable cause to
28 seize the vehicle [pursuant to Section 7-6-2 of this Ordinance and the defenses
29 authorized under Section 7-6-7 of this Ordinance]. The city hearing officer shall
30 mail written notice of his decision to the owner within two working days of the
31 hearing. If the city hearing officer finds that the law enforcement officer did not
32 have probable cause to seize the vehicle in question or that the vehicle should

1 otherwise be released, he shall issue and date a Certificate of Release, a copy of
2 which shall be given to the owner of the vehicle. Upon receipt of the owner's
3 copy of such certificate, the city shall release the vehicle to its owner or the
4 owner's agent, and storage fees shall be waived [or imposed at the discretion of
5 the hearing officer in consideration of the totality of the circumstances;
6 however, the tow fee shall be imposed if the hearing officer finds probable
7 cause to seize the vehicle pursuant to Section 7-6-2 of this Ordinance]. If the
8 owner fails to present such certificate to the municipal employee having custody
9 of the vehicle within 24 hours of its receipt, excluding days when the DWI
10 Forfeiture Office is not open for business, the owner shall assume liability for all
11 subsequent storage charges. The certificate shall advise the owner of such
12 requirement. If the City Hearing Officer determines that the vehicle was properly
13 seized, proceedings for an order for forfeiture shall be instituted promptly. In
14 the event of seizure pursuant to division (B) of this section, proceedings for an
15 order for forfeiture shall be instituted. Any person or entity who, pursuant to
16 the records of the Motor Vehicle Division of the State Taxation and Revenue
17 Department, has an ownership or security interest in the subject matter vehicle
18 shall be served with notice of the forfeiture proceedings.

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

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

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

1 “§ 7-6-6 TEMPORARY SEIZURE/IMMOBILIZATION.

2 Notwithstanding any other provision of this Ordinance, in the interest of
3 public safety and health, the Police Department may ~~[seize a vehicle at the time~~
4 ~~of an arrest of a person for driving while intoxicated or impaired and may~~
5 ,subsequent to the seizure of a vehicle pursuant to § 7-6-2,] offer the owner a[n
6 ~~opportunity to voluntarily request the alternative of~~ voluntary agreement of
7 temporary] immobilization of the ~~[seized]~~ vehicle for a period of thirty (30) days
8 [or greater. The Police Department shall set forth procedures and guidelines for
9 the length, fees and other conditions of the temporary vehicle immobilization
10 agreements that may be offered to owners, based on the current charges that
11 are the basis of the seizure, the offender's history or prior DWI and revoked
12 license offenses, and prior vehicle seizures involving the same offender or owner
13 pursuant to this ordinance. The Police Department shall not be required to offer
14 any agreement of temporary immobilization to an owner as an alternative to
15 seeking forfeiture of the seized vehicle and shall set forth guidelines where an
16 offer for temporary immobilization of the seized vehicle is contrary to public
17 safety]. ~~[Such Temporary]~~ immobilization may be accomplished by an
18 Immobilization Device (Boot) at the owner's designated location within the City
19 of Albuquerque, or by impoundment at a secure facility, in accordance with
20 procedures established by the Police Department. The owner shall pay the
21 Police Department a fee for this voluntary, temporary seizure/immobilization and
22 sign an Immobilization Agreement with the City of Albuquerque. ~~[Such~~
23 ~~temporary seizure/immobilization shall be imposed after opportunity for a~~
24 ~~probable cause hearing as provided for in this ordinance.]~~ The Boot shall be
25 removed and the vehicle released by the Police Department, only after the
26 owner has produced proof that an ignition interlock device has been installed by
27 a certified vendor of such devices[(if required by the voluntary agreement of
28 temporary immobilization) and complied with all other terms set forth in the
29 temporary immobilization agreement]. ~~[Additionally, the owner must produce an~~
30 ~~executed contract for the maintenance of such device by the certified vendor~~
31 ~~for a minimum period of six months if the Breath Alcohol Test ("BAT") score~~
32 ~~was .08 to .15 and a minimum contract of 12 months if the BAT is an~~

1 ~~aggravated BAT score (.16 or greater) or by refusal to provide a BAT sample in~~
2 ~~violation of the New Mexico Implied Consent Act (Sections 66-8-105 through~~
3 ~~66-8-112 NMSA 1978).]~~

4 SECTION 4. SECTION 7-6-7 IS HEREBY AMENDED AS FOLLOWS:

5 “§ 7-6-7 PROPERTY INTEREST NOT SUBJECT TO FORFEITURE.

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

7 (A) Any owner or co-owner of the vehicle ~~[who did not have knowledge of~~
8 ~~nor consented to, the use of the vehicle by the driver who caused the vehicle to~~
9 ~~become a nuisance, or (2) did not have knowledge, or could not have~~
10 ~~reasonably anticipated, that the vehicle would be used in a manner constituting~~
11 ~~the nuisance described by this ordinance, provided that u~~ if the owner or co-
12 owner demonstrates by a preponderance of evidence that the owner or co-
13 owner could not have reasonably anticipated that the vehicle could be used in a
14 manner constituting the nuisance(s) described by this ordinance. U]pon
15 establishment of a prima facie ~~[case of lack of knowledge or consent by the~~
16 ~~owner or co-owner, the burden of proving knowledge and consent shall be upon~~
17 the city showing of the “innocent owner defense” prescribed in this subsection,
18 the burden is upon the city to prove, by a preponderance of evidence, that the
19 owner could have reasonably anticipated that the vehicle could be used in the
20 manner constituting the nuisance(s)]; or,

21 (B) Any secured party, to the extent of the security interest, if the secured
22 party proves that the security interest was acquired in good faith with no
23 knowledge or reason to believe that the vehicle would be used by the driver
24 whose license has been suspended or revoked. If the security interest is greater
25 than the value of the vehicle, title shall be transferred to the secured party upon
26 motion to the district court. Any secured party acquiring an interest after the
27 vehicle is in the custody of the police department shall have the burden of
28 intervening in the forfeiture proceeding to protect such interest. Any interest in
29 the vehicle must be properly filed with the New Mexico Motor Vehicle
30 Department in accordance with Sections 66-3-201 and 66-3-202 NMSA 1978
31 before the date of incident leading to the seizure.

32 [(C) Any governmental lien and priority of lien as provided by law.]

1 (D) No owner or co-owner may make use of the defense contained in
2 subparagraph (A) of this section if the records of the New Mexico Motor Vehicle
3 Division show that such owner or co-owner acquired ownership of the vehicle
4 after the date of the seizure at issue by law enforcement. The date of
5 application for vehicle registration on the vehicle's MVD registration application
6 form shall be the earliest recorded document governing the date at which the
7 owner or co-owner acquired ownership of the vehicle.

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

13 SECTION 5. SEVERABILITY CLAUSE

14 If any section, paragraph, sentence, clause, word or phrase of this ordinance
15 amendment is for any reason held to be invalid or unenforceable by any court of
16 competent jurisdiction, such decision shall not affect the validity of the
17 remaining provisions. The Council hereby declares that it would have passed
18 this ordinance amendment and each section, paragraph, sentence, clause, word
19 or phrase thereof irrespective of any provisions being declared unconstitutional
20 or otherwise invalid.”

21 SECTION 6. COMPILATION. Sections 2 and 3 of this ordinance shall
22 amend, be incorporated in and made part of the Revised Ordinances of
23 Albuquerque, New Mexico, 1994.

24 SECTION 7. EFFECTIVE DATE. This ordinance shall take effect five
25 days after publication by title and general summary.