

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**
3 **OF ALBUQUERQUE RELATING TO SEIZURES AND FORFEITURES OF**
4 **CERTAIN 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**
9 **DWI seizure program present a resource for effectuating important law**
10 **enforcement activities such as providing bait cars for anti-vehicle theft**
11 **programs and 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**
19 **of carrying out official law enforcement activities, and to (iii) adopt non-**
20 **substantive changes that help clarify the Article's intent with respect to**
21 **considerations to be 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, as defined by the State Motor Vehicle Code, NMSA 1978 §**
25 **66-1-4.11, is hereby declared to be a nuisance and subject to immediate**
26 **seizure and forfeiture pursuant to the provisions of this article if it is:**

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1 (A) Operated by a person in the commission of a DWI offense NMSA
2 1978 § 66-8-102 and has, on at least one prior occasion, been arrested,
3 summonsed or convicted for (i) an offense of driving under the influence of an
4 intoxicating liquor or drugs in any jurisdiction, or (ii) Homicide by vehicle or
5 great bodily harm by vehicle NMSA 1978 § 66-8-101 while under the influence
6 of intoxicating liquor or while under the influence of any drug, and/or

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

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

11 “§ 7-6-5 SEIZURE; FORFEITURE PROCEEDING.

12 (A) Motor vehicles subject to forfeiture under this article may be seized by
13 any law enforcement officer with jurisdiction in the city upon an order issued
14 by the district court.

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

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

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

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

14 The owner may request a hearing be scheduled by the city hearing officer.
15 The hearing, if requested within the period set forth above, shall be conducted
16 by the City Hearing Officer, as defined by the Independent Office of Hearings
17 Ordinance (§§ 2-7-8-1 et seq. ROA 1994). The hearing shall be held and the
18 hearing officer shall prepare a written decision within 20 working days
19 (excluding weekends and holidays) of receipt of the request unless the
20 hearing is continued with the agreement of the parties. The hearing shall be
21 informal and not bound by the technical rules of evidence. The City Hearing
22 Officer shall determine whether the law enforcement officer had probable
23 cause to seize the vehicle pursuant to Section 7-6-2 of this Ordinance and the
24 defenses authorized under Section 7-6-7 of this Ordinance. The city hearing
25 officer shall mail written notice of his decision to the owner within two working
26 days of the hearing. If the city hearing officer finds that the law enforcement
27 officer did not have probable cause to seize the vehicle in question or that the
28 vehicle should otherwise be released, he shall issue and date a Certificate of
29 Release, a copy of which shall be given to the owner of the vehicle. Upon
30 receipt of the owner's copy of such certificate, the city shall release the
31 vehicle to its owner or the owner's agent, and storage fees shall be waived or
32 imposed at the discretion of the hearing officer in consideration of the totality
33 of the circumstances; however, the tow fee shall be imposed if the hearing

1 officer finds probable cause to seize the vehicle pursuant to Section 7-6-2 of
2 this Ordinance. If the owner fails to present such certificate to the municipal
3 employee having custody of the vehicle within 24 hours of its receipt,
4 excluding days when the DWI Forfeiture Office is not open for business, the
5 owner shall assume liability for all subsequent storage charges. The certificate
6 shall advise the owner of such requirement. If the City Hearing Officer
7 determines that the vehicle was properly seized, proceedings for an order for
8 forfeiture shall be instituted promptly. In the event of seizure pursuant to
9 division (B) of this section, proceedings for an order for forfeiture shall be
10 instituted. Any person or entity who, pursuant to the records of the Motor
11 Vehicle Division of the State Taxation and Revenue Department, has an
12 ownership or security interest in the subject matter vehicle shall be served
13 with notice of the forfeiture proceedings.

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

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

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

29 **“§ 7-6-6 TEMPORARY SEIZURE/IMMOBILIZATION.**

30 Notwithstanding any other provision of this Ordinance, in the interest of
31 public safety and health, the Police Department may, subsequent to the
32 seizure of a vehicle pursuant to § 7-6-2, offer the owner a voluntary agreement
33 of temporary immobilization of the seized vehicle for a period of thirty (30)

1 days or greater. The Police Department shall set forth procedures and
2 guidelines for the length, fees and other conditions of the temporary vehicle
3 immobilization agreements that may be offered to owners, based on the
4 current charges that are the basis of the seizure, the offender's history or prior
5 DWI and revoked license offenses, and prior vehicle seizures involving the
6 same offender or owner pursuant to this ordinance. The Police Department
7 shall not be required to offer any agreement of temporary immobilization to an
8 owner as an alternative to seeking forfeiture of the seized vehicle and shall set
9 forth guidelines where an offer for temporary immobilization of the seized
10 vehicle is contrary to public safety. Temporary immobilization may be
11 accomplished by an Immobilization Device (Boot) at the owner's designated
12 location within the City of Albuquerque, or by impoundment at a secure
13 facility, in accordance with procedures established by the Police Department.
14 The owner shall pay the Police Department a fee for this voluntary, temporary
15 seizure/immobilization and sign an Immobilization Agreement with the City of
16 Albuquerque. The Boot shall be removed and the vehicle released by the
17 Police Department, only after the owner has produced proof that an ignition
18 interlock device has been installed by a certified vendor of such devices (if
19 required by the voluntary agreement of temporary immobilization) and
20 complied with all other terms set forth in the temporary immobilization
21 agreement."

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

23 **"§ 7-6-7 PROPERTY INTEREST NOT SUBJECT TO FORFEITURE.**

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

25 **(A) Any owner or co-owner of the vehicle if the owner or co-owner**
26 **demonstrates by a preponderance of evidence that the owner or co-owner**
27 **could not have reasonably anticipated that the vehicle could be used in a**
28 **manner constituting the nuisance(s) described by this ordinance. Upon**
29 **establishment of a prima facie showing of the "innocent owner defense"**
30 **prescribed in this subsection, the burden is upon the city to prove, by a**
31 **preponderance of evidence, that the owner could have reasonably anticipated**
32 **that the vehicle could be used in the manner constituting the nuisance(s); or,**

1 (B) Any secured party, to the extent of the security interest, if the secured
2 party proves that the security interest was acquired in good faith with no
3 knowledge or reason to believe that the vehicle would be used by the driver
4 whose license has been suspended or revoked. If the security interest is
5 greater than the value of the vehicle, title shall be transferred to the secured
6 party upon motion to the district court. Any secured party acquiring an
7 interest after the vehicle is in the custody of the police department shall have
8 the burden of intervening in the forfeiture proceeding to protect such interest.
9 Any interest in the vehicle must be properly filed with the New Mexico Motor
10 Vehicle Department in accordance with Sections 66-3-201 and 66-3-202 NMSA
11 1978 before the date of incident leading to the seizure.

12 (C) Any governmental lien and priority of lien as provided by law.

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

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

25 SECTION 6. SEVERABILITY CLAUSE.

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

1 **SECTION 7. COMPILATION.** Sections 2 through 5 of this ordinance
2 shall amend, be incorporated in and made part of the Revised Ordinances of
3 Albuquerque, New Mexico, 1994.

4 **SECTION 8. EFFECTIVE DATE.** This ordinance shall take effect five
5 days after publication by title and general summary.

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