CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2007-1

AN ORDINANCE

DECLARING A MOTOR VEHICLE TO BE A PUBLIC NUISANCE IF THE VEHICLE IS OPERATED BY A PERSON WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR AND/OR DRUGS UNDER CERTAIN CIRCUMSTANCES; AND CREATING A NEW SECTION 24-9 SFCC 1987 TO BE KNOWN AS THE VEHICLE FORFEITURE ORDINANCE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. A new Section 24-9 SFCC 1987 is ordained to read:

24-9 [NEW MATERIAL.] VEHICLE FORFEITURE ORDINANCE.

Section 2. A new Section 24-9.1 SFCC 1987 is ordained to read:

24-9.1 [NEW MATERIAL.] Authority; Title. Section 24-9 SFCC 1987 is adopted pursuant to the statutory grant of authority contained in Sections 3-17-1 and 3-18-17A NMSA 1978 and shall be referred to as the Vehicle Forfeiture Ordinance. This Ordinance shall be effective and enforced within the geographical boundaries of the city of Santa Fe.

Section 3. A new Section 24-9.2 SFCC 1987 is ordained to read:

24-9.2 [NEW MATERIAL.] Purpose. It is the intent of the governing body by adopting this Ordinance:

A. To abate motor vehicle nuisances, in order to protect the physical and emotional health, safety, and financial interests of the public placed at risk by persons who drive while under the influence of alcohol or drugs in violation of law, or who drive in violation of driver's

license restrictions, including any required ignition interlock equipment. Among the dangers created by these types of unlawful activities are the potential for serious bodily injury and loss of life to innocent persons and families, as well as considerable property damage.

B. To remedy the substantial risk of harm the public is faced with when vehicles are driven by repeat offenders who have not been deterred by lesser sanctions.

Section 4. A new Section 24-9.3 SFCC 1987 is ordained to read:

24-9.3 [NEW MATERIAL.] Vehicle Nuisance. A motor vehicle is hereby declared to be a public nuisance if it is:

A. Operated by a person who is arrested for a DWI offense; or

B. Operated by a person whose license is currently revoked or denied as a result of a DWI arrest or conviction prohibiting them from driving, and/or whose license is conditioned upon the use of an ignition interlock device, and the terms and conditions of the restrictions are violated.

Section 5. A new Section 24-9.4 SFCC 1987 is ordained to read:

24-9.4 [NEW MATERIAL.] Vehicles Subject To Forfeiture. Except as otherwise provided herein, any motor vehicle which has been declared to be a public nuisance as defined in this Ordinance shall be subject to civil temporary seizure or permanent forfeiture proceedings as set forth in this Ordinance.

Section 6. A new Section 24-9.5 SFCC 1987 is ordained to read:

24-9.5 [NEW MATERIAL.] Seizure; Forfeiture Proceeding.

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

B. Seizure without such order may be made if seizure is incident to an arrest of the driver of the vehicle either for driving while intoxicated or for driving while his or her license is suspended or revoked as a result of a DWI arrest or conviction.

C. A vehicle temporarily seized under this Ordinance shall not be subject to replevin, but is deemed to be in the custody of the police department seizing it subject only to the orders and decrees of the district court. The police department may take custody of the vehicle and remove it to appropriate and official locations within the district court's jurisdiction for disposition in accordance with this Ordinance. **The police department shall establish reasonable towing and storage fees for vehicles temporarily seized in accordance with this Ordinance.**

D. At the time of seizure, the police department shall serve a copy of the notice of forfeiture upon the operator of the vehicle. A copy of the notice of forfeiture shall be mailed postage prepaid to the lawfully registered owner as verified by the New Mexico motor vehicle division on the next city business day following the arrest. The notice shall include the following:

(1) The license plate number, make, type and color of the vehicle;

(2) The location from which the vehicle was temporarily seized;

(3) A statement that the vehicle has been taken into custody and stored;

(4) The reason for temporary seizure;

(5) A name, phone number and title of the city employee from whom the owner can obtain further information;

(6) A statement that daily storage charges will be assessed in addition to a towing charge;

(7) A statement that the owner has the right to contest the validity of the impoundment by requesting a hearing in writing within ten city business days of the date of mailing of the notice of forfeiture; and

(8) A copy of this Ordinance.

E. The owner may request that a hearing be scheduled before a hearing officer, appointed by the city manager or request an alternative as set forth in Section 24-9.6 SFCC 1987.

The hearing shall be held within ten city business days of receipt of the request unless the hearing is continued with agreement of the parties. The hearing shall be informal and not bound by the technical rules of evidence. The hearing officer shall only determine whether the police officer had probable cause to arrest the operator of the vehicle and probable cause to seize the vehicle pursuant to this Ordinance. The hearing officer shall mail written notice of his or her decision to the owner within two city business days of the hearing.

F. If the hearing officer finds that the police officer did not have probable cause to arrest the operator and seize the vehicle, the vehicle shall be released. The hearing officer shall provide a written certificate of release to the owner of the vehicle. Upon receipt of the owner's copy of such certificate, the city shall release the vehicle to its owner or the owner's agent and storage fees shall be waived. If the owner fails to present such certificate to the city employee having custody of the vehicle within 24 hours of its receipt, excluding non city business days, the owner shall assume liability for all subsequent storage charges. The certificate shall advise the owner of such requirement. Any vehicle not recovered by the owner within 30 calendar days after being notified by the city that such vehicle has been released by the city shall be deemed abandoned and disposed of in accordance with the notice provisions of Section 29-1-14, NMSA 1978.

G. If the hearing officer determines that there was probable cause to arrest the operator of the vehicle and that the vehicle was properly seized, the city shall promptly file a verified petition in district court to abate the public nuisance and forfeit the vehicle pursuant to Section 30-8-8 NMSA 1978.

H. Any person who, pursuant to the records of the motor vehicle division of the state taxation and revenue department, has an ownership or security interest in the vehicle subject to forfeiture shall be served with notice of the verified complaint in district court.

I. When property is forfeited pursuant to a district court judgment, the police

department shall sell the motor vehicle, and the proceeds shall be used to carry out the purpose and intent of this Ordinance. Any proceeds that exceed the costs of administering this Ordinance shall be used for DWI enforcement, prevention and education. Any proceeds from the sale of abandoned vehicles seized pursuant to this Ordinance shall also be used to carry out the purpose and intent of this Ordinance.

Section 7. A new Section 24-9.6 SFCC 1987 is ordained to read:

24-9.6 [NEW MATERIAL.] Alternatives to Forfeiture.

A. The following procedures shall apply if the owner of the vehicle was not the operator of the vehicle subject to the forfeiture:

(1) There shall be no forfeiture if the operator had no prior DWI history.

(2) Upon the first seizure of the vehicle, if the owner demonstrates by notarized affidavit that the owner of the vehicle had no prior knowledge of the operator's DWI history, no action shall be taken against the vehicle. The affidavit shall remain on file with the city.

(3) Upon the second seizure of the same vehicle, if the owner demonstrates by notarized affidavit that the owner of the vehicle had no prior knowledge of the operator's DWI history, the vehicle shall be immobilized for a period of 30 calendar days and shall not be forfeited.

(4) Upon the third seizure of the same vehicle, the vehicle shall be subject to the forfeiture under this Ordinance if the operator is convicted of DWI for a third time.

B. The following procedures shall apply to an owner who is properly licensed but is arrested for driving while intoxicated.

(1) An owner who has never been convicted of DWI or has only once previously been convicted of DWI may elect in lieu of forfeiture to have installed at the owner's expense an ignition interlock device approved by the New Mexico Department

of Transportation Traffic Safety Bureau and/or to have the vehicle immobilized for the period of time during which the charges are pending, and, if convicted, for as long thereafter as required by the court.

(2) An owner whose arrest for DWI does not result in a conviction for DWI shall not have his or her vehicle forfeited.

C. Immobilization may be accomplished by an immobilization device (boot) at the owner's designated location within the city limits, or by impoundment at a secure facility, in accordance with procedures established by the police department.

D. The operator or owner shall pay towing and storage fees and all fees associated with the immobilization or interlock device.

Section 8. A new Section 24-9.7 SFCC 1987 is ordained to read:

24-9.7 [NEW MATERIAL.] Property Interest Not Subject To Forfeiture.

A. Notwithstanding the provisions above, any forfeiture shall be subject to the interest of:

(1) Any owner or co-owner of the vehicle who did not have knowledge of, nor consented to, the use of the vehicle by the operator who caused the vehicle to become a nuisance, provided that upon establishment of a prima facie case of lack of knowledge or consent by the owner or co-owner, the burden or proving knowledge and consent shall be upon the city.

(2) Any secured party, to the extent of the security interest, if the secured party establishes the security interest was acquired in good faith with no knowledge or reason to believe that the vehicle would be used by the operator of the vehicle declared to be a public nuisance as set forth in this Ordinance.

B. If the security interest is greater than the value of the vehicle, title shall be transferred to the secured party upon approval of the district court. Any secured party acquiring

an interest after the vehicle is in the custody of the police department shall have the burden of intervening in the forfeiture proceeding to protect such interest. Any interest in the vehicle shall be properly filed with the New Mexico motor vehicle division in accordance with Sections 66-3-201 and 66-3-202 NMSA 1978 before the date of incident leading to the seizure.

Section 9. A new Section 24-9.8 SFCC 1987 is ordained to read:

24-9.8 [NEW MATERIAL.] Severability Clause. If any section, paragraph, word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The governing body hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 10. A new Section 24-9.9 SFCC 1987 is ordained to read:

24-9.9 [NEW MATERIAL.] Effective Date. This Ordinance shall take effect January 22, 2007.

Section 11. A new Section 24-9.10 SFCC 1987 is ordained to read:

24-9.10 [NEW MATERIAL.] Review. The governing body shall review this ordinance one year after the effective date in order to review enforcement and consider any amendments.

PASSED, APPROVED and ADOPTED this 10th day of January, 2007.

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DAVID COSS, MAYOR