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INTRODUCED BY:

AN ORDINANCE

**AMENDING ARTICLE 24-9 SFCC 1987 REGARDING THE CITY'S VEHICLE
FORFEITURE ORDINANCE.**

Section 1. Section 24-9.5 SFCC 1987 (being Ord. #2007-1, §6) is amended to read:

A. Motor vehicles subject to forfeiture under this section may be seized by any 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 result of a DWI arrest or conviction.

C. A vehicle temporarily seized under this section 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

1 disposition in accordance with this section. The police department shall establish reasonable
2 towing and storage fees for vehicles temporarily seized in accordance with this section.

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

- 7 (1) The license plate number, make, type and color of the vehicle;
- 8 (2) The location from which the vehicle was temporarily seized;
- 9 (3) A statement that the vehicle has been taken into custody and stored;
- 10 (4) The reason for temporary seizure;
- 11 (5) A name, phone number and title of the city employee from whom the
12 owner can obtain further information;
- 13 (6) A statement that daily storage charges [~~will~~] shall be assessed in addition
14 to a towing charge;
- 15 (7) A statement that the owner has the right to contest the validity of the
16 impoundment by requesting a hearing in writing within [~~ten (10)~~] fifteen (15) city
17 business days of the date of mailing of the notice of forfeiture; and
- 18 (8) A copy of this section.

19 E. The owner may request that a hearing be scheduled before a hearing officer,
20 appointed by the city manager or request an alternative as set forth in subsection 24-9.6 SFCC
21 1987. The hearing shall be held within [~~ten (10)~~] fifteen (15) city business days of receipt of the
22 request unless the hearing is continued with agreement of the parties. The hearing shall be
23 informal and not bound by the technical rules of evidence. The hearing officer shall only
24 determine whether the police officer had probable cause to arrest the operator of the vehicle and
25 probable cause to seize the vehicle pursuant to this section. The hearing officer shall mail or

1 deliver written notice of his or her decision to the owner within two (2) city business days of the
2 hearing.

3 F. If the hearing officer finds that the police officer did not have probable cause to
4 arrest the operator and seize the vehicle, the vehicle shall be released. The hearing officer shall
5 provide a written certificate of release to the owner of the vehicle. Upon receipt of the owner's
6 copy of such certificate, the city shall release the vehicle to its owner or the owner's agent and
7 storage fees shall be waived. If the owner fails to present such certificate to the city employee
8 having custody of the vehicle within [~~twenty-four (24)~~] seventy-two (72) hours of its receipt,
9 excluding non-city business days, the owner shall assume liability for all subsequent storage
10 charges. The certificate shall advise the owner of such requirement. Any vehicle not recovered by
11 the owner within thirty (30) calendar days after being notified by the city that such vehicle has
12 been released by the city shall be deemed abandoned and disposed of in accordance with the
13 notice provisions of Section 291-1-4, NMSA 1978.

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

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

21 I. When property is forfeited pursuant to a district court judgment, the police
22 department shall sell the motor vehicle, and the proceeds shall be used to carry out the purpose
23 and intent of this section. Any proceeds that exceed the costs of administering this section shall
24 be used for DWI enforcement, prevention and education. Any proceeds from the sale of
25 abandoned vehicles seized pursuant to this section shall also be used to carry out the purpose and

1 intent of this section. However, the police department may keep up to five vehicles per year for
2 official police department purposes as set forth in department policies approved by the city
3 manager.

4 J. Any owner of a forfeited vehicle shall not be permitted to purchase the vehicle
5 when offered for sale by the city.

6 K. At any time subsequent to seizure and prior to the entry of a district court
7 judgment, the owner of a motor vehicle seized under this ordinance may retrieve personal
8 property (other than the motor vehicle) from the motor vehicle. The police department shall
9 allow an owner to retrieve personal property within seventy-two (72) hours, excluding non-city
10 business days, of contacting the police department.

11 **Section 2. Section 24-9.6 SFCC 1987 (being Ord. #2007-1, §7) is amended to**
12 **read:**

13 **24-9.6 Alternatives to Forfeiture.**

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

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

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

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

25 (4) Upon the third seizure of the same vehicle, the vehicle shall be subject to

1 the forfeiture under this section if the operator is ~~[convicted of DWI for a third time]~~
2 arrested for DWI or for driving on a license revoked or denied as a result of an arrest or
3 conviction for DWI.

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

6 (1) An owner who has never been convicted of DWI ~~[or has only once~~
7 ~~previously been convicted of DWI]~~ may elect in lieu of forfeiture to have installed at the
8 owner's expense an ignition interlock device approved by the New Mexico Department of
9 Transportation Traffic Safety Bureau and/or to have the vehicle immobilized for the
10 period of time during which the charges are pending, and, if convicted, for as long
11 thereafter as required by the court.

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

14 (3) If the records of the activity of the ignition interlock device prior to
15 adjudication of the DWI charge show alcohol use by any operator, regardless whether it
16 is the owner whose use was originally declared to be a nuisance, the vehicle shall be
17 returned to the police department within twenty-four (24) hours of notification to the
18 owner by the police department, to be impounded until the DWI charge is resolved, and
19 the police department may assess additional towing and storage charges. If the owner
20 fails to return the vehicle within twenty-four (24) hours after notification of an ignition
21 interlock violation, the owner shall be deemed to have abandoned all alternatives to
22 forfeiture and the vehicle shall be subject to forfeiture proceedings.

23 C. The following procedures shall apply to an owner who is not properly licensed
24 but is arrested for driving on a license revoked or denied as a result of a DWI arrest or conviction,
25 and is not also arrested at the same time for a second or subsequent DWI:

1 (1) An owner who, according to the records of the New Mexico motor
2 vehicle division at the time of arrest, had completed the period of revocation imposed by
3 the motor vehicle division and was eligible to have his or her license reinstated with or
4 without an ignition interlock, may elect in lieu of forfeiture to obtain a valid license
5 (which may contain an ignition interlock restriction) within thirty (30) calendar days of
6 arrest and within that time pay towing, storage and administrative fees set by the police
7 department to have the motor vehicle returned to the owner.

8 (2) If the owner needs to install an ignition interlock in the motor vehicle to
9 obtain an ignition interlock license:

10 (a) The ignition interlock shall be installed at the police department
11 impound lot;

12 (b) The owner shall sign an agreement with the police department
13 allowing the owner to remove the motor vehicle from the lot for the purpose of
14 obtaining the ignition interlock license within twenty-four (24) hours of removal
15 of the motor vehicle, which agreement shall confess forfeiture of the motor
16 vehicle upon any default by the owner of any terms of the agreement. The
17 agreement shall provide, in addition to any other reasonable provisions, that:

18 (i) The owner shall report within twenty-four (24) hours of
19 removal whether the owner has obtained the required interlock license;

20 (ii) If the interlock license has not been obtained, the owner
21 shall have the remainder of the thirty (30) days to attempt to get the
22 interlock license;

23 (iii) If it is not possible to obtain the interlock license, the
24 vehicle shall be subject to forfeiture and may be seized by the police
25 department if not returned within twenty-four (24) hours of removal; and

1 (iv) If the records of the activity of the ignition interlock
2 device during the period of time required by the Motor Vehicle Division
3 show alcohol use by any operator, regardless whether it is the owner
4 whose use was originally declared to be a nuisance, the vehicle shall be
5 returned to the police department within twenty-four (24) hours of
6 notification to the owner by the police department, to be immobilized for
7 a period of sixty (60) days for a first incident of alcohol use, and the
8 police department may assess additional towing, storage and
9 immobilization charges. If the owner fails to return the vehicle within
10 twenty-four (24) hours after notification of an ignition interlock
11 violation, or if there is a second incident of alcohol use, the owner shall
12 be deemed to have abandoned all alternatives to forfeiture and the
13 vehicle shall be subject to forfeiture proceedings.

14 (3) An owner who has previously had his or her motor vehicle returned
15 under this section shall be ineligible to have that or any other motor vehicle returned
16 under this section.

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

20 [~~D~~] E. The operator or owner shall pay towing and storage fees and all fees associated
21 with the immobilization or interlock device.

22 F. If a vehicle is determined by the police department to be so seriously damaged that it
23 cannot be driven without extensive repairs and if the vehicle is not impounded as evidence, the police
24 department may have the vehicle towed to a private towing company lot. The owner of the vehicle
25 may recover the vehicle by a payment of \$270 to the police department and payment of any towing

1 and storage charges to the private towing company. In the alternative, the owner may convey his or
2 her interest in the vehicle to the police department and the owner shall not be charged any fees. If an
3 owner does not choose either of these two options within thirty (30) days of impoundment, the
4 vehicle shall be deemed abandoned and shall be disposed of by the police department.

5 **Section 3. Section 24-9.7 (being Ord. #2007-1, §8) is amended to read:**

6 **24-9.7 Property Interest Not Subject to Forfeiture.**

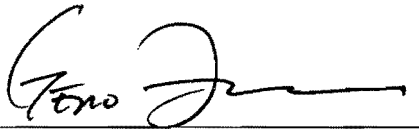
7 A. Notwithstanding the provisions above, any forfeiture shall be subject to the
8 interest of:

9 (1) Any owner or co-owner of the vehicle not listed or named on the title or
10 registration with the operator who caused the vehicle to become a nuisance, who did not
11 have knowledge of, nor consented to, the use of the vehicle by the operator who caused
12 the vehicle to become a nuisance, provided that upon establishment of a prima facie case
13 of lack of knowledge or consent by the owner or co-owner, the burden of proving
14 knowledge and consent shall be upon the city.

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

19 B. If the secured interest is greater than the value of the vehicle, title shall be
20 transferred to the secured party upon approval of the district court. Any secured party acquiring
21 an interest after the vehicle is in the custody of the police department shall have the burden of
22 intervening in the forfeiture proceeding to protect such interest. Any interest in the vehicle shall
23 be properly filed with the New Mexico motor vehicle division in accordance with Sections 66-3-
24 201 and 66-3-202 NMSA 1978 before the date of incident leading to the seizure.

1 APPROVED AS TO FORM:

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4 GENO ZAMORA, CITY ATTORNEY

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25 Cao/M/melissa/2012 bills/2012-2 DWI forfeiture revisions