

8-18-98  
*postponed indefinitely*

Submitted by: Assembly Member Abney

Prepared by: Department of Law

For reading: March 10, 1998

ANCHORAGE, ALASKA

AO NO. 98-58

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE TITLE 8, THE PENAL CODE, BY ENACTING A NEW CHAPTER 8.55 TO AUTHORIZE AND ESTABLISH CONDITIONS AND PROCEDURES FOR THE SEIZURE, FORFEITURE, RECOVERY AND DISPOSITION BY THE MUNICIPALITY OF SPECIFIED PROCEEDS OF A CRIME, SUBSTITUTED PROCEEDS OF A CRIME, INSTRUMENTALITIES OF A CRIME, CONTRABAND AND OTHER PROPERTY THE MANUFACTURE, POSSESSION, SALE, DISTRIBUTION OR USE OF WHICH IS ILLEGAL OR WHICH IS USED IN ILLEGAL ACTIVITIES.

THE ANCHORAGE ASSEMBLY ORDAINS

**Section 1:** Anchorage Municipal Code Title 8 is hereby amended by enacting a new chapter 8.55, Forfeitures, to read as follows:

**Chapter 8.55  
FORFEITURES**

**8.55.010      Items Subject to Forfeiture**

- A.** A civil action may be commenced against a criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.
- B.** A civil action may be commenced against a noncriminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime; provided, however, that a judgment of forfeiture shall be limited to the amount of the proceeds of the crime. Any action under this section must be commenced within five (5) years of the commission of the crime and shall be civil, remedial and in personam in nature and shall not be deemed to be a penalty or criminal forfeiture for any purpose. An action under this section is not a criminal proceeding and may not be deemed to be a previous prosecution.
- C.** The following may be forfeited to the Municipality
- 1** A controlled substance which has been manufactured, distributed, dispensed, acquired or possessed in violation of this code or AS 11.71.
  - 2** Raw materials, products and equipment which are used or intended for use in manufacturing, distributing, compounding, delivering, importing or exporting a controlled substance which is a felony or an offense under AS 11.71.

3. Property which is used or intended for use as a container for property described in subsections C.1. or C.2. this section.
  4. A conveyance, including but not limited to aircraft, vehicles or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession or concealment of property described in subsections C.1. or C.2. of this subsection in violation of a felony offense or of AS 11.71; provided, however,
    - a. A conveyance may not be forfeited if the owner of the conveyance established, by a preponderance of the evidence at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation; and
    - b. A forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence at a hearing before the court as the trier of fact, that use of the conveyance in violation of this section or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation.
  5. Books, records and research products and materials, including formulas, microfilm, tapes and data which are used in violation of this section or AS 11.71.
  6. Money, securities, negotiable instruments or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71.
  7. A firearm which is visible, carried during or used in furtherance of a violation of this chapter or AS 11.71.
  8. Any property purchased with property listed in subsection C.6. of this section.
  9. Any real property, building or other structure which has been used or is intended for use in the possession or concealment, sale or receipt of property described in subsections C.1., C.2., and C.3. of this section.
- D. Property listed in subsection C. of this section may be forfeited to the Municipality upon judgment of a court in a separate civil proceeding in rem. The court may order a forfeiture in the in rem proceeding if it finds that an item specified in this chapter was used during or in aid of a violation of this chapter or AS 11.71.
1. It is not a defense in an in rem proceeding brought under this section that a criminal proceeding has not resulted in a conviction or has resulted in a conviction of a lesser offense for a violation of this chapter or AS 11.71.

**8.55.020      Seizure and custody of property.**

A. Property listed in this chapter may be seized by a peace officer upon an order issued by a court having jurisdiction over the property upon a showing of probable cause that the property may be forfeited under this chapter. Seizure without a court order may be made if:

- 1 The seizure is incident to a valid arrest or a search under a valid search warrant.
- 2 The property subject to seizure has been the subject of an earlier judgment in favor of the Municipality in a criminal proceeding or civil proceeding in rem under this chapter or AS 11.71; or
- 3 There is probable cause that the property was used, is being used or is intended for use in violation of this chapter or AS 11.71 and the property is easily movable; property seized under this paragraph may not be held for more than forty-eight (48) hours without a court order obtained to continue its detention.

B. Property taken or detained under subsection A. of this section shall be held in the custody of the Anchorage Police Department subject only to the orders and decrees of the court having jurisdiction over any forfeiture proceedings. If property is seized under this chapter, the Anchorage Police Department may:

- 1 Place the property under seal;
- 2 Remove the property to a place designated by the court;
- 3 Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

C. Within ten (10) days after a seizure the chief of police or his designee shall make an inventory of any property seized, including controlled substances, and shall appraise the value of any items seized other than controlled substances.

**8.55.030      Procedure for forfeiture actions.**

A. Within twenty (20) days after a seizure under this chapter, the chief of police shall, by certified mail, notify any person known to have an interest in an item with an appraised value of five hundred dollars (\$500.00) or more, or who is ascertainable from official registration numbers, licenses or other state, federal or municipal numbers on the item of the pending forfeiture action. Additionally, the chief of police shall publish notice of forfeiture action of an item valued at five hundred dollars (\$500.00) or more in a newspaper of general circulation in the judicial district in which the seizure was made. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed or possessed in violation of this chapter or AS 11.71, regardless of their value.

- 1           **B.**     Upon service or publication of notice of commencement of a forfeiture action under this  
2           section, a person claiming interest in the property shall file within thirty (30) days after the  
3           service or publication, a notice of claim setting out the nature of the interest, the date it was  
4           acquired, the consideration paid and an answer to the Municipality's allegations. If a claim  
5           and answer is not filed within the time specified, the property described in the Municipality's  
6           allegation must be ordered forfeited to the Municipality without further proceedings or  
7           showings.
- 8
- 9           **C.**     Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in  
10          an action commenced under this section must be determined by the court sitting without a  
11          jury. This proceeding may be held in abeyance until conclusion of any pending criminal  
12          charges against the claimant under this chapter or AS 11.71.
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- 14          **D.**     In a forfeiture action pursuant to this article the following burdens of proof shall apply:
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- 16               1     In a forfeiture action commenced by the Municipality against a criminal defendant,  
17               the burden shall be upon the claiming authority to prove by a preponderance of the  
18               evidence the facts necessary to establish a claim for forfeiture.
- 19
- 20               2.    In a forfeiture action commenced by the Municipality against a noncriminal  
21               defendant:
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- 23                   a.   If the action relates to the proceeds of a crime, the burden shall be upon the  
24                   Municipality to prove by a preponderance of the evidence the facts necessary  
25                   to establish a claim for forfeiture and that the noncriminal defendant either:
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- 27                               (1)   knew or should have known that the proceeds were obtained  
28                               through the commission of a crime; or
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- 30                               (2)   fraudulently obtained his or her interest in the proceeds to avoid  
31                               forfeiture.
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- 33                   b.   If the action relates to the substituted proceeds of a crime, the burden shall  
34                   be upon the Municipality to prove by a preponderance of the evidence the  
35                   facts necessary to establish a claim for forfeiture and that the noncriminal  
36                   defendant either:
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- 38                               (1)   knew that the property sold or exchanged to obtain an interest in the  
39                               substituted proceeds was obtained through the commission of a  
40                               crime; or
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- 42                               (2)   fraudulently obtained his or her interest in the substituted proceeds  
43                               to avoid forfeiture.
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- 45                   c.   If the action relates to an instrumentality of a crime, except as provided for  
46                   in subsection A. of this section, the burden shall be upon the Municipality to  
47                   prove by a preponderance of the evidence the facts necessary to establish a

claim for forfeiture and that the noncriminal defendant either:

- (1) knew that the instrumentality was or would be used in the commission of a crime; or
- (2) knowingly obtained his or her interest in the instrumentality to avoid forfeiture.

3. In a forfeiture action commenced by the Municipality against a noncriminal defendant the following rebuttable presumptions shall apply:

- a. A noncriminal defendant who did not pay fair consideration for the proceeds of a crime, the substituted proceeds of a crime or the instrumentality of a crime shall be presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.
- b. A noncriminal defendant who obtains an interest in the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime with knowledge of an order of provisional remedy relating to said property issued pursuant to this article shall be presumed to know that such property was the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime.
- c. A noncriminal defendant who participated in or was aware of a scheme to conceal or disguise the manner in which said noncriminal obtained his or her interest in the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.

4. An action for forfeiture shall be commenced by service pursuant to this chapter of a summons with notice or summons and verified complaint. No person shall forfeit any right, title or interest in any property who is not a defendant in this action.

5. Any defendant in a forfeiture action who knowingly and intentionally conceals, destroys, dissipates, alters, removes from the jurisdiction or otherwise disposes of property specified in a provisional remedy ordered by the court or in a judgment of forfeiture in knowing contempt of said order or judgment shall be subject to criminal liability and sanctions.

**8.55.040**      **Petition for release of seized items.**

A. A claimant may at any time petition for release of a seized item as follows:

- 1 To a court in which a warrant for seizure has been issued;
2. To a court in which a criminal or civil action alleging forfeiture or the item

has been filed; or

3. Before an action is filed or if no seizure warrant was issued, to a court in the judicial district in which the violation took place.

- B. An item may not be released by the court under subsection A. of this section unless the claimant gives adequate assurance that the item will remain subject to the court's jurisdiction and:

The court finds that the release is in the best interest of the Municipality; or

2. The claimant provides a bond or other valid and equivalent security equal to twice the assessed value of the item.

**8.55.050**      **Petition for sale of seized item.**

A claimant may petition the court for sale of an item before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interests of the Municipality. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action.

**8.55.060**      **Municipality disposal of forfeited property.**

- A. Property forfeited under this chapter other than controlled substances shall be disposed of by the chief of police in accordance with applicable law. The chief of police may:

1. Destroy property harmful to the public;
2. Sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody and court costs;
3. Take custody of the property and authorize its use in the enforcement of this chapter;
4. Take custody of the property and remove it for disposition in accordance with law.

**8.55.070**      **Remittance to claimant.**

- A. Upon a showing that a claimant is entitled to remittance the court shall order that:

1. If the claimant is entitled to the item it shall be delivered to the claimant immediately;
2. If the claimant is entitled to remittance of some value less than the total

value of the item, the claimant is entitled, at the claimant's choice, to receive either the value of the claimant's interest, or upon receipt of payment of the difference in value by the claimant, the entire item.

- B An offender who used an item subject to remission in violation of this chapter or AS 11.71 shall be assessed a fine which may not be less than the cost of any lien payment or remittance made by the state plus the reasonable costs of the seizure.

**8.55.080**      **Definitions.**

- A In this chapter:

- 1 "Property" means and includes real property, personal property, money, negotiable instruments, securities or any thing of value or any interest in a thing of value.
- 2 "Proceeds of a crime" means any property obtained through the commission of a felony crime as defined in AS 11.71, and includes any appreciation in value of such property.
- 3 "Substituted proceeds of a crime" means any property obtained by the sale or exchange of proceeds of a crime and any gain realized by such sale or exchange.
- 4 "Instrumentality of a crime" means any property other than real property and any buildings, fixtures, appurtenances and improvements thereon, whose use contributes directly and materially to the commission of a crime defined.
- 5 "Defendant" means a person against whom a forfeiture action is commenced and includes a "criminal defendant" and a "noncriminal defendant."
- 6 "Criminal defendant" means a person who has criminal liability for a crime as defined in AS 11.71.
- 7 "Noncriminal defendant" means a person other than a criminal defendant who possesses an interest in the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.
- 8 "Fair consideration" means fair consideration is given for property or obligation (a) when in exchange for such property or obligation as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or (b) when such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property or obligation obtained.

**Section 2:** That this ordinance shall become effective immediately upon its passage and approval by the Assembly.

**PASSED AND APPROVED** by the Anchorage Assembly this \_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Chair of the Assembly

**ATTEST:**

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Municipal Clerk