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indefinitely

Submitted by: Assembly Member Abney

Prepared by: Department of Law

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ANCHORAGE, ALASKA
AO NO. 98-58(S)

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 in personam 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 in personam 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. Any action under this subsection 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 in a civil in personam proceeding or a civil in rem proceeding:
1. A controlled substance which has been manufactured, grown, 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, growing, importing or exporting a controlled substance which is a felony or an offense under AS 11.71 or an offense under this code.

3. Property which is used or intended for use as a container for property described in subsections C.1. or C.2. of 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 section in violation of this title or AS 11.71 or which is used in the commission of any felony offense.
 5. Books, records or research products and materials, including formulas, microfilm, tapes and data which are used in the commission of any felony offense or in violation of this title or AS 11.71.
 6. Money, securities, negotiable instruments or other things of value used in financial transactions derived from activity prohibited by any statute defining a felony offense or by this title or AS 11.71.
 7. A firearm or any other weapon which is visible, carried during or used in furtherance of the commission of any felony offense or in furtherance of any violation of this title or AS 11.71.
 8. Any property purchased with property listed in subsection C.6. of this section.
 9. All real property, including any right, title, and interest (including any leasehold interest), in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, any felony offense or in furtherance of any violation of this title or AS 11.71.
 10. Any other property including but not limited to gambling devices, pornographic material, alcohol-serving material, and computers that are used in the commission of any felony offense or in violation of this title or AS 11.71.
- D. The court may order a forfeiture in an in rem or in personam proceeding if the court finds that an item specified in this chapter was used during or in aid of a violation of this title or AS 11.71, or in the commission of any felony crime.
- E. It is not a defense in an in personam or in rem proceeding brought under this chapter 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 title or the Alaska Statutes. Any action under this chapter must be commenced within five (5) years of the commission of any offense, violation, or crime which the Municipality alleges give rise to a civil forfeiture action brought under this chapter.

- 1 F. To the extent of an interest of an owner of property, that property may not be
2 forfeited if that owner of the property establishes, by a preponderance of the
3 evidence at a hearing before the court as the trier of fact, that use of the property
4 in the commission of any felony offense or in violation of this title or AS 11.71 was
5 committed by another person and that the owner was neither a consenting party nor
6 privy to the offense or the violation. A forfeiture of a property encumbered by a
7 valid security interest at the time of seizure is subject to the interest of the secured
8 party if the secured party establishes, by a preponderance of the evidence at a
9 hearing before the court as the trier of fact, that use of the property in the
10 commission of any felony offense or in violation of this title or AS 11.71 was
11 committed by another person and that the secured party was neither a consenting
12 party nor privy to the offense or the violation.

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14 **8.55.020 Seizure and custody of property.**

- 15
16 A. Property listed in this chapter may be seized by a peace officer upon an order issued by a
17 court having jurisdiction over the property upon a showing of probable cause that the
18 property may be forfeited under this chapter. Seizure without a court order may be made
19 if:
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21 1. The seizure is incident to a valid arrest or a search under a valid search warrant.
22
23 2. The property subject to seizure has been the subject of an earlier judgment in favor
24 of the Municipality in a criminal proceeding or civil proceeding under this title or
25 the Alaska Statutes.
26
27 3. There is probable cause that the property was used, is being used or is intended for
28 use in violation of this title or the Alaska Statutes and the property is easily
29 movable; property seized under the authority of AMC 8.55.020.A.3 may not be
30 held for more than forty-eight (48) hours without a court order obtained to continue
31 its detention.
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33 B. Property taken or detained under subsection A. of this section shall be held in the custody
34 of the Anchorage Police Department subject only to the orders and decrees of the court
35 having jurisdiction over any forfeiture proceedings. If property is seized under this chapter,
36 the Anchorage Police Department may:
37
38 1 Place the property under seal;
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40 2. Remove the property to a place designated by the court;
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42 3 Take custody of the property and remove it to an appropriate location for
43 disposition in accordance with law.
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45 C. Within ten (10) days after a seizure the chief of police or his or her designee shall make an
46 inventory of any property seized, including controlled substances.

8.55.030 Procedure for forfeiture actions.

- A. Within thirty (30) days after a seizure under this chapter, the Municipality shall, by certified mail, attempt to notify any person known to have an interest in an item 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 Municipality shall publish notice of the forfeiture action 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, grown, or possessed in violation of this title or AS 11.71. The requirements of publication described in this subsection do not apply to any item sought to be forfeited which is a motor vehicle whose title is required to be recorded pursuant to the Alaska statutes.
- B. Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within twenty (20) days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid and an answer to the Municipality's allegations. If a claim and answer is not filed within the time specified, the property described in the Municipality's allegation must be ordered forfeited to the Municipality without further proceedings or showings.
- C. Any civil proceeding under this chapter may be held in abeyance until conclusion of any pending criminal charges against the claimant or defendant under this title or the Alaska Statutes.
- D. In a forfeiture action pursuant to this chapter the following burdens of proof shall apply:
- In a forfeiture action commenced by the Municipality against a criminal defendant, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture.
2. In a forfeiture action commenced by the Municipality against a noncriminal defendant:
- a. If the action relates to the proceeds of a crime, the burden shall be upon the Municipality to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the noncriminal defendant either:
- (1) knew or should have known that the proceeds were obtained through the commission of a crime; or
- (2) fraudulently obtained his or her interest in the proceeds to avoid forfeiture.

- 1 b. If the action relates to the substituted proceeds of a crime, the burden shall
2 be upon the Municipality to prove by a preponderance of the evidence the
3 facts necessary to establish a claim for forfeiture and that the noncriminal
4 defendant either:
5
6 (1) knew that the property sold or exchanged to obtain an interest in the
7 substituted proceeds was obtained through the commission of a
8 crime; or
9
10 (2) fraudulently obtained his or her interest in the substituted proceeds
11 to avoid forfeiture.
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13 c. If the action relates to an instrumentality of a crime, except as provided for
14 in subsection A. of this section, the burden shall be upon the Municipality
15 to prove by a preponderance of the evidence the facts necessary to establish
16 a claim for forfeiture and that the noncriminal defendant either:
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18 (1) knew that the instrumentality was or would be used in the
19 commission of a crime; or
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21 (2) knowingly obtained his or her interest in the instrumentality to
22 avoid forfeiture.
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24 3. In a forfeiture action commenced by the Municipality against a noncriminal
25 defendant the following rebuttable presumptions shall apply:
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27 a. A noncriminal defendant who did not pay fair consideration for the
28 proceeds of a crime, the substituted proceeds of a crime or the
29 instrumentality of a crime shall be presumed to know that such property
30 was the proceeds of a crime, the substituted proceeds of a crime or an
31 instrumentality of a crime.
32
33 b. A noncriminal defendant who obtains an interest in the proceeds of a crime,
34 substituted proceeds of a crime or an instrumentality of a crime with
35 knowledge of an order of provisional remedy relating to said property
36 issued pursuant to this article shall be presumed to know that such property
37 was the proceeds of a crime, substituted proceeds of a crime or an
38 instrumentality of a crime.
39
40 c. A noncriminal defendant who participated in or was aware of a scheme to
41 conceal or disguise the manner in which said noncriminal obtained his or
42 her interest in the proceeds of a crime, substituted proceeds of a crime or an
43 instrumentality of a crime is presumed to know that such property was the
44 proceeds of a crime, the substituted proceeds of a crime or an
45 instrumentality of a crime.
46

4. An action for forfeiture shall be commenced by service pursuant to this chapter of a summons with notice or summons and verified complaint.

5. Any claimant or 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 **Municipal 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:

Destroy property harmful to the public;

2. Sell the property and use the proceeds to cover both the costs of administering the forfeiture program created by Chapter 8.55 and general Municipal expenses, including the costs of drug education programs, drug rehabilitation programs, and the Anchorage Police Academy;
3. Take custody of the property and authorize its use in the enforcement of this chapter; or
4. Take custody of the property and remove it for disposition in accordance with law.

8.55.070 Remittance to claimant or defendant.

- A. Upon a showing that a claimant or defendant is entitled to remittance the court shall order that:
 1. If the claimant or defendant is entitled to the item, it shall be delivered to the claimant or defendant immediately;
 2. If the claimant or defendant is entitled to remittance of some value less than the total value of the item, the claimant or defendant is entitled, at the choice of the claimant or defendant, to receive either the value of the interest of the claimant or defendant, or upon receipt of payment of the difference in value by the claimant or defendant, the entire item.
- B. An offender who used an item subject to remission in furtherance of any felony offense or in violation of this title 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 Municipality plus the reasonable costs of the seizure.

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:

Municipal Clerk