

CLERK'S OFFICE

APPROVED

Date: 8-28-01

ANCHORAGE, ALASKA

AO No. 2001- 139

Submitted by: Assembly Member Traini

Prepared by: Department of Law

For Reading: JULY 10, 2001

AN ORDINANCE OF THE MUNICIPALITY OF ANCHORAGE AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 9.28 TO REQUIRE LIABILITY INSURANCE OR OTHER SECURITY TO OPERATE A MOTOR VEHICLE WITHIN THE MUNICIPALITY, TO ESTABLISH MINIMUM INSURANCE LEVELS AND EXEMPTIONS, TO ESTABLISH PENALTIES FOR THE FAILURE TO HAVE INSURANCE, INCLUDING IMPOUND AND FORFEITURE OF A VEHICLE USED IN THE OFFENSE, AND TO AMEND OTHER CODE SECTIONS RELATED THERETO.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code chapter 9.28 is amended by adding a new section to read as follows:

9.28.030 Insurance or other security required.

A. The owner or operator of a motor vehicle shall have a current motor vehicle liability policy, or other security that complies with Alaska Statutes Title 28, when operating the vehicle within the municipality.

B. It is unlawful:

For any person to operate a motor vehicle without proof of the required security in the vehicle;

2. For any person to fail to produce proof of security to a police officer upon demand;

3. For any person to operate a motor vehicle without the required security in effect at the time of operation; or

4. For any owner to knowingly allow another person to operate a motor vehicle that is not covered by the required security.

C. A person convicted of violating subsections B.1. or B.2. shall pay a fine of \$100 unless the person produces in court proof of the required security and the security had been issued to the person prior to the time of the offense and was valid at the time of the offense, in which instance the fine shall be \$50.

D. Upon conviction under subsections B.3. or B.4. of this section, the court:

Shall impose a minimum jail sentence of:

a. Not less than 72 consecutive hours with 72 hours suspended and a fine of not less than \$250.00 if the person has been previously convicted;

- b. Not less than 72 consecutive hours and a fine of not less than \$500.00 if the person has been previously convicted more than twice;
- c. Not less than 20 days and a fine of not less than \$1,000.00 if the person has been previously convicted three times;
- d. Not less than 60 days and a fine of not less than \$2,000.00 if the person has been previously convicted four times;
- e. Not less than 120 days and a fine of not less than \$3,000.00 if the person has been previously convicted five times; or
- f. Not less than 240 days and a fine of not less than \$4,000.00 if the person has been previously convicted more than five times.

2. May impose additional conditions of probation.

3. May not:

a. Suspend execution of sentence or grant probation except on condition that the person serve a minimum term of imprisonment and perform required community work service as provided in subsection 1 of this subsection; or

b. Suspend imposition of sentence.

4. Shall revoke the person's license, privilege to drive, or privilege to obtain a license, and the person may not be issued a new license nor may the privilege to drive or obtain a license be restored for an additional period of not less than 90 days after the date that the person would have been entitled to restoration of driving privileges.

5. Except in mitigated circumstances, the court shall impose more than the mandatory minimum sentence. Mitigated circumstances do not exist if any of the following circumstances are present:

a. The defendant's driving conduct caused personal injury or property damage to another;

b. The defendant failed to stop for a red light or stop sign;

c. A container of alcoholic beverage was open in the passenger compartment of the defendant's vehicle;

d. The defendant was on release under AS 12.30.020 or AS 12.30.040 or on probation for DUI or refusal charge or conviction;

e. The defendant has been previously convicted of reckless driving or leaving the scene of an accident; or

f. The defendant had a breath test result of 0.15 gram or more of alcohol per 210 liters of the defendant's breath as determined by a chemical test within four hours after the alleged offense was committed.

6. If the person has any interest in the vehicle used in the commission of the offense, the court shall order that:

a. The vehicle be impounded for 30 days if the person has been previously convicted once; and

b. The person's interest in the vehicle be forfeited to the municipality if the person has been previously convicted two or more times.

At sentencing, the court shall order that any vehicle return bond which has been posted to secure the release of the vehicle be forfeited to the municipality if the vehicle subject to the vehicle return bond is not returned to the custody of the municipality within five days after the sentencing. At sentencing, the court shall order that any vehicle return bond posted to secure the release of the vehicle be exonerated when the vehicle has been returned to the custody of the municipality. At sentencing, the court may also order that any proceeds of any sale, transfer, or encumbrance of the vehicle be forfeited to the municipality if the vehicle has been sold, transferred, or encumbered while the vehicle has been subject to a vehicle return bond. A vehicle ordered impounded pursuant to this subsection shall not be released until after the person seeking release of the vehicle has provided proof of ownership of the vehicle and paid or provided proof of payment of the impound fees and the storage fees. Impound fees shall include the actual cost of impound plus an administrative fee of \$220.00 to offset the municipality's processing costs. Any order of impoundment or forfeiture entered under this subsection is subject to the rights of lienholders, owners, lessors, lessees, and co-owners who are not the person convicted of driving without insurance as those rights are adjudicated in civil proceedings under section 9.28.026. If the municipality has brought a civil action under section 9.28.026 seeking impoundment or forfeiture as against all those with an interest in the vehicle except the person charged with a violation of this section, that civil action shall provide the sole forum in which lienholders, owners, lessors, lessees, and co-owners who claim an interest in the vehicle but are not the person charged with a violation of this section can seek relief.

7. Shall impose a fine of \$75 if the person has not been previously convicted.

E. When a person's license is cancelled, limited, suspended or revoked, that person shall be informed at the time of the action by the state department of public safety or the court that takes the action that, upon a conviction of driving in the municipality at a time when that person's driver's license or privilege to drive has been cancelled, suspended or revoked, or upon a conviction of driving in violation of a limitation of the license, that person will be subject to the mandatory minimum sentence of imprisonment provided for the offense.

1 F. In this section, the term "previously convicted" means having been convicted in this or
2 another jurisdiction, within ten years preceding the date of the present offense, of a
3 violation of this section or another law or ordinance with substantially similar elements.

4 G. The magistrate or judge who sets the conditions of release for a person arrested under this
5 section shall at the same time set a vehicle return bond for the vehicle alleged in an oral
6 statement of a police officer to have been used in the commission of the offense if the
7 records of the Alaska department of public safety, division of motor vehicles or the records
8 of an agency with similar responsibilities in another state show that the person arrested for
9 the offense has any interest in the vehicle. The purpose of setting a vehicle return bond is
10 to secure the presence of the vehicle pending trial and to provide security to be forfeited
11 along with the proceeds of a sale, transfer, or encumbrance if the defendant's interest in the
12 vehicle is sold, transferred, or encumbered after the vehicle has been released pending trial.
13 A person who secures the release of a vehicle pursuant to a vehicle return bond must return
14 the vehicle to the custody of the municipality upon order of the court. If the vehicle's release
15 has been obtained through the posting of a vehicle return bond and the vehicle is not
16 returned pursuant to the court's order after a judgment of conviction, the municipality may,
17 in addition to obtaining the forfeited bond funds, seize the vehicle to implement the
18 impoundment or forfeiture ordered by the court. If the person has not been previously
19 convicted, the magistrate or judge setting the vehicle return bond shall order that the
20 requirement of the vehicle return bond shall automatically expire 30 days after the vehicle
21 has been seized if the vehicle has not been released pursuant to a vehicle return bond. The
22 vehicle return bond set under the authority of this subsection may only be posted by a
23 person alleged to have used the vehicle in the commission of one of the offenses described
24 in this section or by a person who agrees to return the vehicle upon order of the court upon
25 penalty of forfeiture of the bond. The vehicle return bond set under the authority of this
26 subsection may be posted at the municipality. A vehicle return bond may be posted in cash
27 only. A vehicle return bond shall be set at a minimum of:

- 28 1 Two hundred fifty dollars if the person has not been previously convicted.
- 29 2. Five hundred dollars if the person has been previously convicted and the vehicle is
30 20 years old or older.
- 31 3 One thousand dollars if the person has been previously convicted and the vehicle
32 is 15 years old or older but less than 20 years old.
- 33 4. One thousand five hundred dollars if the person has been previously convicted and
34 the vehicle is ten years old or older but less than 15 years old.
- 35 5. Two thousand dollars if the person has been previously convicted and the vehicle
36 is five years old or older but less than ten years old.
- 37 6. Two thousand five hundred dollars if the person has been previously convicted and
38 the vehicle is less than five years old.

A vehicle return bond may be set above the minimum if the vehicle appears to have unusually high value for its age. A vehicle that is or has been the subject of an order under this subsection shall not be released pending trial until the person seeking release of the vehicle has provided proof of ownership of the vehicle and paid or provided proof of payment of the vehicle return bond and towing and storage fees, including the administrative fee of \$220.00 to offset the municipality's processing costs. If a vehicle has not been impounded for a longer period than the vehicle would be impounded if the person were convicted, the court shall not delete the requirement of the vehicle return bond or exonerate a posted vehicle return bond until the vehicle for which bond has been posted is returned pursuant to court order. Unless the following sentence applies, a vehicle that is or has been the subject of a vehicle return bond may only be released if the person seeking the release of the vehicle pays or provides proof of payment of the towing and storage costs, including the administrative fee of \$220.00 to offset the municipality's processing costs. A vehicle may be recovered without payment of the towing and storage costs, including the administrative fee, only if a court makes a specific finding that the seizure of the vehicle was legally unjustified and such specific finding follows a contested hearing or is pursuant to a stipulation between the parties. A seizure is "legally unjustified" only if there was: (1) no reasonable suspicion for the stop of the vehicle leading to an arrest for one of the offenses described in this section based on the individual allegedly operating, driving, or being in actual physical control of the vehicle; or (2) no probable cause for the arrest of an individual for one of the offenses described in this section based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

H. The conditions of release established for a person charged under this section shall include at a minimum an order that the person's interest, if any, in the vehicle alleged in an oral statement by a police officer, criminal complaint, information, or indictment to have been used in the commission of the offense be forfeited if the person does not appear as ordered. This subsection applies to any release before judgment of conviction, including any release on the person's own recognizance.

I. A vehicle that is or has been the subject of an order setting a vehicle return bond under subsection G. of this section and has not been released pursuant to that order is subject to the provisions of AS 28.10.502 if no criminal complaint, information, or indictment is filed by the date and time of the scheduled arraignment alleging a violation of this section or if the count of the criminal complaint, information, or indictment alleging a violation of this section is amended upon motion of the prosecution, is dismissed by the prosecution, or is resolved by the acquittal of the person alleged to have violated this section. The provisions of chapter 9.50 do not apply to a vehicle that is, or has been, the subject of an order setting a vehicle return bond under subsection F. of this section. Any vehicle return bond set expires on the date and time of the scheduled arraignment if no criminal complaint, information, or indictment alleging a violation of this section is filed by the date and time of the scheduled arraignment.

J. Vehicles ordered impounded under subsection D.6. which are not claimed at the end of the court-ordered period of impoundment may be disposed of pursuant to the provisions of AS 28.10.502. If the contents of the vehicle have not been recovered before such disposal, the

contents may be disposed of with the vehicle. Personal property in a vehicle that is subject to a vehicle return bond under subsection F. and has not been released pursuant to that vehicle return bond can be recovered only by the owner of the vehicle and only upon payment of a fee charged for monitoring the recovery of such personal property. Such fee shall be set by contract between the towing and storage contractor and the municipality if it is not established by ordinance. Such fee shall be recoverable by the owner of the vehicle if a court makes a specific finding that the seizure of the vehicle was legally unjustified following a contested hearing or pursuant to a stipulation between the parties.

K. A motor vehicle that is the subject of a vehicle return bond under subsection G. and has not been released pursuant to that vehicle return bond shall be held in the custody of the police department or a private corporation authorized by the chief of police to retain custody of the motor vehicle, subject only to the orders and decrees of any court having jurisdiction over any forfeiture or impoundment proceedings. If a motor vehicle is seized under this section, the chief of police or his or her authorized designee may:

Remove the motor vehicle and any contents of the motor vehicle to a place designated by the court; or

2. Take custody of the motor vehicle and any contents of the motor vehicle and remove it to an appropriate location for disposition in accordance with law.

L. Before disposing of any vehicle forfeited under this section, the chief of police or his or her designee shall make an inventory of the contents of any motor vehicle seized. Property forfeited under this section shall be disposed of by the chief of police or his or her designee in accordance with this subsection. Property forfeited under this section includes both the vehicle that is the subject of the forfeiture action and the contents of the vehicle if those contents have not been recovered before the date of the disposal. The chief of police or his or her designee may:

1 Sell the property at an auction conducted by an auctioneer not employed by the impound contractor and use the proceeds for payment of all proper expenses of seizure, custody, the costs of the auction, court costs, and municipal attorney fees. The municipality shall receive at least 30 percent of the proceeds of any sale of forfeited vehicles following deduction for the costs charged by the auctioneer for the auction of those vehicles regardless of whether the costs of impound and storage exceed the value of the vehicles sold;

2. Take custody of the property and use it for the benefit of the public; or

3. Destroy the property.

(CAC 9.12.010; AO No. 267-76; AO No. 78-72; AO No. 78-230(S); AO No. 83-168, 10-17-83; AO No. 89-52; AO No. 91-57(S))

Section 2. Anchorage Municipal Code section 9.28.026 is hereby amended to read as follows:

9.28.026 Impoundment and forfeiture of vehicle.

A. A motor vehicle that is operated, driven or in the actual physical control of an individual arrested for or charged with an alleged violation of section 9.28.019, pertaining to driving while license suspended\revoked\cancelled, section 9.28.020, pertaining to driving while intoxicated, [OR] an alleged violation of section 9.28.022, pertaining to refusal to submit to chemical tests, or section 9.28.030, pertaining to failure to have insurance, may be impounded and may be forfeited to the municipality in accordance with this section.

B. It shall be presumed that a vehicle operated by or driven by or in the actual physical control of an individual arrested for or charged with an alleged violation of section 9.28.030, section 9.28.019, section 9.28.020 or section 9.28.022 has been so operated by the registered owners thereof or has been operated by another person with the knowledge and consent of the registered owners. A vehicle so operated is declared to be a public nuisance for which the registered owners hold legal responsibility subject only to the defenses as set forth by law. The proposes of this section and the criminal impoundment and forfeiture provisions of sections 9.28.019, 9.28.020, [AND] 9.28.022, and 9.28.030, include protecting the public, removing public nuisances, [AND] deterring driving under the influence [WHILE INTOXICATED], and protecting the public from uninsured motorists, but do not include the generation of revenues for the municipality.

C. *General provisions.*

In the case of an alleged violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or subsection 9.28.030E., and in addition to the penalties set forth in those sections, the vehicle used in the alleged violation shall be impounded for 30 days if the person driving, operating, or in the actual physical control of the vehicle has not been previously convicted and shall be forfeited to the municipality if the person driving, operating, or in the actual physical control of the vehicle has been previously convicted. Impoundment may be accomplished through a seizure of the vehicle incident to an arrest or pursuant to a court order entered in the course of civil or criminal enforcement proceedings. Impoundment through a seizure of the vehicle incident to an arrest is at the discretion of the arresting officer.

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3. Upon the request of the municipality or a claimant, a civil proceeding seeking impoundment or forfeiture shall be held in abeyance until conclusion of any pending criminal charges arising out of the incident giving rise to the forfeiture or impoundment action under section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030.

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6. Any requests for release of a vehicle which is the subject of a civil impoundment or forfeiture action filed under this section which are brought by a person or entity who has not been charged with a violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 must be brought in the forum of the civil action.

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- 2 7. For purposes of this section, when a person other than the claimant was in
3 possession of the vehicle and was driving with a suspended, revoked, or cancelled
4 license or in violation of a limited license or without a valid driver's license, it is
5 presumed that the claimant did have reasonable cause to believe that the vehicle
6 would be used in violation of this Code. Also for purposes of this section, when the
7 claimant and driver are not the same person and the claimant and driver have a
8 familial relationship, such as husband and wife, father and daughter, mother and
9 stepson, etc., it shall be presumed that the claimant is responsible and that the
10 vehicle was operated by the driver, in violation of section 9.28.019, 9.28.020, [OR]
11 9.28.022, or 9.28.030, with the knowledge and consent of the claimant.

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13 13. Release of vehicle pending hearing.

- 14 a. A claimant who is not charged with a violation of section 9.28.019, 9.28.020,
15 [OR] 9.28.022, or 9.28.030 may petition for setting or revision of bail
16 release before a civil action is filed. Such petition shall be made to a court
17 in the municipality.
- 18 b. A vehicle return bond shall be set for each vehicle alleged in the complaint
19 to have been used in an alleged violation of section 9.28.019, 9.28.020,
20 [OR] 9.28.022, or 9.28.030. The purpose of setting a vehicle return bond on
21 the vehicle is to secure the presence of the vehicle and to provide security
22 to be forfeited along with the proceeds of a sale, transfer, or encumbrance
23 if the vehicle is sold, transferred, or encumbered after the vehicle has been
24 released pending hearing. If the vehicle's release has been obtained through
25 the posting of a vehicle return bond and the vehicle is not returned pursuant
26 to the court's order, the municipality may, in addition to obtaining the
27 forfeited bond funds, seize the vehicle to implement the impoundment or
28 forfeiture ordered by the court. A person who secures the release of a
29 vehicle pursuant to a vehicle return bond must return the vehicle upon order
30 of the court. If a vehicle has not been impounded for a longer period than
31 the vehicle would be impounded if the person were convicted, the court
32 shall not delete the requirement of the vehicle return bond or exonerate a
33 posted vehicle return bond until the vehicle for which bond has been posted
34 is returned pursuant to court order. A vehicle return bond may be posted in
35 cash only. A vehicle return bond shall be set at a minimum of:
- 36 i. Two hundred fifty dollars if the person charged with a violation of
37 section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 has not been
38 previously convicted;

- ii. Five hundred dollars if the person charged with a violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 has been previously convicted and the vehicle is 20 years old or older;
- iii. One thousand dollars if the person charged with a violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 has been previously convicted and the vehicle is 15 years old or older but less than 20 years old;
- iv. One thousand five hundred dollars if the person charged with a violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 has been previously convicted and the vehicle is ten years old or older but less than 15 years old;
- v. Two thousand dollars if the person charged with a violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 has been previously convicted and the vehicle is five years old or older but less than ten years old; and
- vi. Two thousand five hundred dollars if the person charged with a violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 has been previously convicted and the vehicle is less than five years old.

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18. For purposes of this section, convictions for violation of any combination of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 arising out of a single transaction and a single arrest are considered one previous conviction. The term "previously convicted" means having been convicted in this or another jurisdiction, within ten years preceding the date of the present offense, of section 9.28.019, or operating a motor vehicle, aircraft, or watercraft while intoxicated under section 9.28.020 or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under section 9.28.022 or 28.35.032 or another law or ordinance with substantially similar elements, or of section 9.28.030 or another law or ordinance with substantially similar elements.

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25. For purposes of this section, a seizure is legally unjustified only if there was:

- a. No reasonable suspicion for the stop of the vehicle leading to an arrest for driving without a valid license, [OR] driving under the influence [WHILE INTOXICATED], or operating without the required security based on the individual allegedly operating, driving, or being in actual physical control of the vehicle; or

- b. No probable cause for the arrest of an individual for driving without a valid license, [OR] driving under the influence [WHILE INTOXICATED], or operating without the required security based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

D. *Impoundment.*

A motor vehicle that is operated, driven, or in the actual physical control of an individual arrested for, or charged with, an alleged violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 may be ordered impounded either upon conviction of the defendant of a violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 or upon the decision of a court in a separate civil proceeding. To obtain an order for impoundment in a contested proceeding, the municipality must establish by a preponderance of the evidence that the vehicle was operated, driven, or in the actual physical control of an individual who was acting in violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030.

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4. A vehicle, which is ordered impounded under this section, shall be held for a period of 30 days. An impoundment order may be made either upon conviction of the defendant of a violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 or upon decision of a court in a separate civil proceeding.

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E. *Forfeiture.*

To obtain an order for forfeiture under this section in a contested proceeding, the municipality must establish by a preponderance of the evidence that:

- a. The vehicle was operated, driven or in the actual physical control of an individual who was acting in violation of section 9.28.019, 9.28.020 or 9.28.022, or 9.28.030; and

- b. The individual has been previously convicted.

2. A motor vehicle that is operated, driven or in the actual physical control of an individual arrested or charged with an alleged violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 may be forfeited to the municipality either upon conviction of the defendant of a violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 or upon decision of a court in a separate civil proceeding.

3. A motor vehicle may be seized and towed to a secure location by a peace officer or a peace officer's designee upon an order issued by a court having jurisdiction over the motor vehicle upon a showing of probable cause that the motor vehicle may be forfeited or impounded under this section, section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030. Seizure without a court order may be made if:

- a. The impoundment is incident to an arrest;
- b. The motor vehicle has been ordered impounded or forfeited and that order has not yet been executed; or
- c. There is probable cause to believe that the motor vehicle was operated, driven or in the actual physical control of an individual in violation of section 9.28.019, 9.28.020, [OR OF SECTION] 9.28.022, or 9.28.030.

A motor vehicle impounded under this subsection may not be held for more than two days without a court order obtained to continue its detention.

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5. A motor vehicle seized for the purpose of forfeiture or impoundment shall be held in the custody of the police department or a private corporation authorized by the chief of police to retain custody of the motor vehicle as designated in the first paragraph of this section and subsection C.3 of this section, subject only to the orders and decrees of the court having jurisdiction over any forfeiture or impoundment proceedings. If a motor vehicle is seized under this section, section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030, the chief of police or his authorized designee may:

- a. Remove the motor vehicle and any contents of the motor vehicle to a place designated by the court; or
- b. Take custody of the motor vehicle and any contents of the motor vehicle and remove it to an appropriate location for disposition. No private corporation may make or perform a contract to tow, store, or retain custody of motor vehicles seized or impounded under this section, section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 if any of the owners of that private corporation have been convicted of a felony or any crime involving larceny, theft, or receiving and concealing stolen property within ten years before the date of execution of the contract or during the term of the contract. No private corporation may make or perform a contract to tow, store, or retain custody of motor vehicles seized or impounded under this section, section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 if any of the employees of that private corporation have been convicted of a felony or any crime involving larceny, theft, or receiving and concealing stolen property within five years before the date of execution of the contract or during the term of the contract.

6. Following a forfeiture order under this section, section 9.28.019, 9.28.020, or 9.28.022, or 9.28.030 the chief of police or his or her designee shall make an inventory of the contents of any motor vehicle seized. Personal property in a vehicle that is subject to a vehicle return bond under subsection A.13 of this section and has not been released pursuant to that vehicle return bond can be recovered from a vehicle only by the owner of the vehicle and only upon payment of a fee charged

for monitoring the recovery of such personal property. Such fee shall be set by contract between the towing and storage contractor and the municipality if it is not established by ordinance. Such fee shall be recoverable by the owner of the vehicle if a court makes a specific finding that the seizure of the vehicle was legally unjustified following a contested hearing or pursuant to a stipulation between the parties.

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9. Property forfeited under this section, section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 shall be disposed of by the chief of police or his or her designee in accordance with this subsection. Property forfeited under this section, section 9.28.019, 9.29.020, [OR] 9.28.022, or 9.28.030 includes both the vehicle that is the subject of the forfeiture action and the contents of the vehicle if those contents have not been recovered before the date of the disposal. The chief of police or his or her designee may:

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Property forfeited and sold at auction pursuant to this section, section 9.28.019, 9.28.020, [AND] 9.28.022, and 9.28.030 shall be sold by an auctioneer approved before the auction by the chief of police or his or her designee. Before the auction, the chief of police or his or her designee must approve in advance the auctioneer's costs or the method for determining the auctioneer's costs. The impound contractor shall provide to the chief of police or his or her designee a copy of the auctioneer's report of the auction notarized by the auctioneer. The municipal auditor shall certify the proper disposal of property forfeited under this section, section 9.28.019, 9.28.020, [AND] 9.28.022, and 9.28.030. The chief of police may adopt rules and regulations to implement this section.

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13. Property subject to the interest of a lienholder whose interest has not been forfeited may not be disposed of as provided in this section without the consent of the lienholder. A regulated lienholder's interest in a vehicle shall not be subject to forfeiture in any case where:

- a. The individual who allegedly used the vehicle in violation of section 9.28.019, 9.28.020, [OR] 9.28.022, or 9.28.030 is not the person whose dealings with the lienholder gave rise to the lien; or

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(AO No. 82-205; AO No. 83-168, 10-17-83; AO No. 93-87(S-2), 1-1-94; AO No. 94-71(S), § 1, 4-26-94; AO No. 95-84(S-1), § 18, 4-27-95; AO No. 95-163(S), §§ 10-19, 8-8-95; AO No. 97-87, § 3, 6-3-97)

Section 3. Anchorage Municipal Code section 9.28.027 is hereby amended to read as follows:

9.28.027 Failure to return a vehicle that has been released under a vehicle return bond.

It is unlawful for the person who has secured the release of a vehicle under a vehicle return bond under section 9.28.019, 9.28.020, 9.28.022, [OR] 9.28.026, or 9.28.030 to willfully fail to return that vehicle when ordered by a court or a municipal administrative hearing officer. Each day that a vehicle is not returned constitutes a separate offense under this section.

(AO No. 95-84(S-1), § 19, 4-27-95)

Section 4. This ordinance shall become effective immediately upon passage of authorizing state legislation.

PASSED AND APPROVED by the Anchorage Assembly this 28th day of August, 2001


Chair of the Assembly

ATTEST:


Municipal Clerk

SUMMARY OF ECONOMIC EFFECTS

Page 1

MUNICIPALITY OF ANCHORAGE Summary of Economic Effects - General Government

AO Number: 2001-72

Title: Amending AMC 9.12 and 9.28 to make DWLS penalties the same as DUI, including impound and forfeiture of vehicles.

Sponsor: TRAINI

Preparing Agency: Department of Law

Others Affected: APD

CHANGES IN EXPENDITURES AND REVENUES

(Thousands of Dollars)

Operating Expenditures	FY	FY	FY	FY	FY
1000 Personal Services					
2000 Supplies					
3000 Other Services					
4000 Debt Service					
5000 Capital Outlay					
TOTAL DIRECT COSTS:					
ADD: 6000 Charge from Others					
LESS: 7000 Charge to Others					
FUNCTION COST:					
REVENUES:					
CAPITAL:					
POSITIONS: FT/PT and Temp.					

Public Sector Economic Effects:

There will be an increase in processing criminal prosecutions and expenses related thereto. An attorney, not clerical staff, will have to screen these cases to ensure legal sufficiency. The intake attorneys would be working up additional cases per year. Additionally, many defendants charged will be seeking a Municipal Public Defender.

Under the proposed changes, defendants are facing mandatory jail sentences and vehicle impound or forfeiture. The likelihood of significantly greater requests for jury trials would be

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realized at this office and at the court system. More cases will go to jury trial, slowing the process for all cases and increasing costs for all cases. There will be a need for one additional staff person and two attorneys to process intake paperwork, prepare and file criminal pleadings, participate in court hearings or trials, and conduct follow-up. This staffing will cost at least \$189,000 in the first year. While Alaska Criminal Rule 39 helps defray some of the costs, the sheer volume will increase the costs to the Municipality. Criminal Rule 39 assumes that attorney fees can be collected from the defendant by the Municipality, an assumption the Department of Law is unwilling to make.

There may be a need for a one-half civil attorney position to process forfeiture forms\paperwork, prepare and file civil pleadings, participate in court hearings or trials, and conduct follow-up. The cost estimate is \$37,125.

APD currently manages the towing and impound contracts and coordinates the forfeiture process with the Municipal Attorney's Office. APD would also see an increase in their workload. An administrative charge of \$220 is currently applied to each DUI impound\forfeiture case to cover the 4 hours of officer time (\$40 per hour) and the civil case filing fee (\$60). This charge does not include the Municipal Attorney's Office staff time to process the paperwork and handle the civil cases, but should cover all or most of APD's costs.

Some of the increased costs to the Municipal Attorney's Office and APD will be offset by the collection of fines and forfeiture and sale of vehicles. However, the revenue stream is difficult to estimate since the number of potential cases is unknown.

The fiscal impact to the State Department of Corrections is unknown, however, the cost of imprisonment as a result of a DWI conviction has been measured at \$270 for 72 consecutive hours for the first offense and \$1000 for the second offense, or 20 days. In addition, there may be an increase in the diversion of offenders to half-way houses, etc. as the increase in jail sentences may overwhelm current bed space capacity.

Summary of municipal cost estimates:

Department of Law

2.5 attorneys	\$ 185,625
1 clerical	\$ 40,500

APD	Offset by administrative fee
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If further explanation is necessary, a separate page may be attached.

Private Sector Economic Effects:

There would be an increase in additional business with towing and auction companies handling vehicle storage and forfeiture. There will be economic loss to owners and drivers who are charged and convicted of driving without insurance, which will fluctuate depending on the value of the vehicle. Because of the nature of the penalties, defendants will hire counsel or request

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public defenders and go to trial. There may be some job losses associated with a lack of transportation alternatives after a vehicle is impounded or forfeited, or terminations from employment while serving jail time. There will also be lost wages while serving jail time.

There should be fewer uninsured motorists on the road. Over time, this may translate into not only fewer accidents and fewer uncompensated injuries, but also savings in insurance costs.

If further explanation is necessary, a separate page may be attached.

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