

CLERK'S OFFICE

APPROVED

Date: 7-22-03 ANCHORAGE, ALASKA
AO NO. 2003-106

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 9.28 TO INCREASE
THE ADMINISTRATIVE FEE FOR CIVIL IMPOUND AND FORFEITURE MATTERS.

WHEREAS, effective July 1, 2003 the filing fee for State of Alaska District Court cases is increasing from
\$60 to \$90 per case;

WHEREAS, the Municipality expects to file over 2000 cases for civil impound or forfeiture of vehicles
between July 1 and December 31, 2003, increasing the filing costs in excess of \$60,000.00; and

WHEREAS, the cost of the increased fee should be borne by the defendant owners or drivers and not the
taxpayers; now therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code subsection 9.28.019C.6.b. is hereby amended to read as follows: (the
remainder of the section is not affected and therefore is not set out)

9.28.019 Valid operator's license required.

C. ***

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

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 \$390.00[\$360.00] 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.

Section 2. Anchorage Municipal Code subsection 9.28.019F.6 is hereby amended to read as follows: (the remainder of the section is not affected and therefore is not set out)

9.28.019 **Valid operator's license required.**

F. * * *

6. Two thousand five hundred dollars if the person has been previously convicted and 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 \$390.00 [\$360.00] 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 \$390.00 [\$360.00] to offset the municipality's processing costs. A vehicle may be recovered without payment of the 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.

Section 3. Anchorage Municipal Code subsection 9.28.020C.5.b is hereby amended to read as follows: (the remainder of the section is not affected and therefore is not set out)

9.28.020 Driving under the influence--Prohibited; sentencing.

C. * * *

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

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 \$390.00 [\$360.00] 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 under the influence 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 Section 9.28.020, 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 Section 9.28.020 can seek relief.

Section 4. Anchorage Municipal Code subsection 9.28.020J.6. is hereby amended to read as follows: (the remainder of the section is not affected and therefore is not set out)

9.28.020 Driving under the influence--Prohibited; sentencing.

J. * * *

6. Two thousand five hundred dollars if the person has been previously convicted and 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 \$390.00 [\$360.00] 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 \$390.00 [\$360.00] 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 driving under the influence 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 driving under the influence based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

Section 5. Anchorage Municipal Code subsection 9.28.022D.5.b is hereby amended to read as follows: (the remainder of the section is not affected and therefore is not set out)

9.28.022 Driving under the influence--Refusal to submit to chemical tests.

D * * *

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

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 costs of impound plus an administrative fee of \$390.00 [\$360.00] 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 refusal to submit to chemical tests 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.

Section 6. Anchorage Municipal Code subsection 9.28.022J.6 is hereby amended to read as follows: (the remainder of the section is not affected and therefore is not set out)

9.28.022 Driving under the influence--Refusal to submit to chemical tests.

J * * *

6. Two thousand five hundred dollars if the person has been previously convicted and 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 section 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 \$390.00 [\$360.00] 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 \$390.00 [\$360.00] 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 driving under the influence 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 driving under the influence based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

Section 7. Anchorage Municipal Code subsection 9.28.026C.10.b is hereby amended to read as follows:
(the remainder of the section is not affected and therefore is not set out)

9.28.026 Impoundment and forfeiture of vehicle.

**

C. * * *

- b. Pay or provide proof of payment of any costs imposed, including the impound fees, storage fees and any court costs imposed. The impound fee shall be the actual cost of impound plus an administrative charge of \$390.00 [\$360.00] to offset the municipality's processing costs. If the court makes a specific finding following a contested hearing or pursuant to a stipulation between the parties that the seizure of the vehicle was legally unjustified, the vehicle shall be released at no cost if the person seeking to reclaim the vehicle reclaims the vehicle within five days after the issuance of the court's decision making such a finding. A vehicle ordered released at no charge under this subsection is subject to the provisions of AS 28.10.502 if the vehicle is not reclaimed within five days after the issuance of the court's decision. The provisions of Chapter 9.50 do not apply to vehicles seized under the authority of Section 9.28.026.

Section 8. Anchorage Municipal Code subsection 9.28.026C.13.b.vi is hereby amended to read as follows:
(the remainder of the section is not affected and therefore is not set out)

9.28.026 Impoundment and forfeiture of vehicle.

C. * * *

vi. Two thousand five hundred dollars if the person charged with a violation of Section 9.28.019, 9.28.020, 9.28.022, or 9.28.030 has been previously convicted and 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 subject to an order setting a vehicle return bond may be released pending hearing upon proof of ownership of the vehicle, payment of the vehicle return bond, and payment of towing and storage fees, including the administrative fee of \$390.00 [\$360.00] to offset the municipality's processing costs. If the claimant who has secured the release of the vehicle pending hearing does not cause the vehicle to be returned to impoundment for the purpose of impoundment or forfeiture in accordance with an order entered in the case, the court may order all or any part of the vehicle return bond forfeited to the municipality and may also order that the proceeds of any sale, transfer, or encumbrance are forfeited to the municipality if the vehicle has been sold, transferred, or encumbered while subject to a vehicle return bond. Personal property in a vehicle that is subject to a vehicle return bond under subsection C.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.

Section 9. Anchorage Municipal Code subsection 9.28.030D.5.b is hereby amended to read as follows: (the remainder of the section is not affected and therefore is not set out)

9.28.030 Insurance or other security required.

D. * * *

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 \$390.00 [\$360.00] 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.

Section 10. Anchorage Municipal Code subsection 9.28.030G.6 is hereby amended to read as follows: (the remainder of the section is not affected and therefore is not set out)

9.28.030 Insurance or other security required.

G. * * *

6. Two thousand five hundred dollars if the person has been previously convicted and the vehicle is less than five years old.

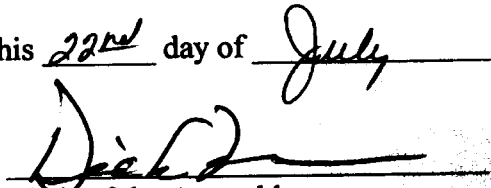
A vehicle return bond may be set above the minimum if the vehicle appears to have unusually high value for its age. A vehicle that is or has been the subject of an order under this subsection shall not be released pending trial until the person seeking release of the vehicle has provided proof of ownership 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 \$390.00 [\$360.00] 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

1 returned pursuant to court order. Unless the following sentence
2 applies, a vehicle that is or has been the subject of a vehicle return
3 bond may only be released if the person seeking the release of the
4 vehicle pays or provides proof of payment of the towing and storage
5 costs, including the administrative fee of \$390.00 [\$360.00] to offset
6 the municipality's processing costs. A vehicle may be recovered
7 without payment of the towing and storage costs, including the
8 administrative fee, only if a court makes a specific finding that the
9 seizure of the vehicle was legally unjustified and such specific finding
10 follows a contested hearing or is pursuant to a stipulation between the
11 parties. A seizure is "legally unjustified" only if there was: (1) no
12 reasonable suspicion for the stop of the vehicle leading to an arrest for
13 one of the offenses described in this section based on the individual
14 allegedly operating, driving, or being in actual physical control of the
15 vehicle; or (2) no probable cause for the arrest of an individual for
16 one of the offenses described in this section based on the individual
17 allegedly operating, driving, or being in actual physical control of the
18 vehicle.


19 ***

20
21 **Section 11.** This ordinance shall be effective retrospectively from July 1, 2003 upon its passage and
22 approval by the Assembly.

23
24 PASSED AND APPROVED by the Anchorage Assembly this 22nd day of July, 2003.

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28 
29 Chair of the Assembly

30
31 ATTEST:

32
33 
34 Municipal Clerk
35 Deputy

36
37
38 G:\MAT\OPEN MATTERS\DUI-DWLS Impound Forfeiture\Admin fee AO.DOC

MUNICIPALITY OF ANCHORAGE

Summary of Economic Effects - General Government

AQ Number: 2003-106 Title

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 9.28 TO INCREASE THE ADMINISTRATIVE FEE FOR CIVIL IMPOUND AND FORFEITURE MATTERS.

Sponsor: Chair of the Assembly at the Request of the Mayor

Preparing Agency: Department of Law

Others Affected: _____

CHANGES IN EXPENDITURES AND REVENUES (Thousands of Dollars)

| Operating Expenditures | FY 03 | FY 04 | FY 05 | FY 06 | FY 07 |
|-------------------------------------|-------|-------|-------|-------|-------|
| 1000 Personal Services | | | | | |
| 2000 Supplies | | | | | |
| 3000 Other Services | 60 | 135 | 150 | 165 | 180 |
| 4000 Debt Service | | | | | |
| 5000 Capital Outlay | | | | | |
| TOTAL DIRECT COSTS: | | | | | |
| ADD: 6000 Charge from Others | | | | | |
| LESS: 7000 Charge to Others | | | | | |
| FUNCTION COST: | | | | | |
| REVENUES: | 45 | 102 | 113 | 124 | 135 |
| CAPITAL: | | | | | |
| POSITIONS: FT/PT and Temp. | | | | | |

SUMMARY OF ECONOMIC EFFECTS

Page 2

Public Sector Economic Effects:

The Department of law filed 213 civil impound or forfeiture complaints in January, 184 in February, 173 in March, 201 in April, 208 in May, and 103 as of June 17. Assuming June will close at approximately 200 cases and with an additional \$30 per case, we would expect to spend an additional \$60,000 (assuming 2000 cases July-December at an additional \$30 per case) Beyond that, we expect an additional increase for Driving Without Insurance (DWOI) cases since the first time offenders we are currently processing are not impounded or forfeited (no court filing fee). However, later this year we expect to start seeing repeat offenders on this charge, which will be a new and significant batch of civil impound and forfeiture cases to file. Without the increase, cases may either be dismissed without filing or additional revenue may have to be diverted or found to make up the shortfall. With the ordinance amendment, and based on our current recovery rate, approximately 75% of the total filing fee increase will be recovered from defendants.

Private Sector Economic Effects:

Individual defendants will have to pay an additional \$30 per civil case filed.

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

Prepared by: Dennis A. Wheeler
Assistant Municipal Attorney

Telephone: 343-4349

MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM

No. AM 598-2003

Meeting Date: July 15, 2003

From: Mayor Begich

Subject: AO 2003-106; AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 9.28 TO INCREASE THE ADMINISTRATIVE FEE FOR CIVIL IMPOUND AND FORFEITURE MATTERS.

Effective July 1, 2003 the filing fee for State of Alaska District Court cases is increasing from \$60 to \$90 per case. The Municipality expects to file at least 2000 cases for civil impound or forfeiture of vehicles between July 1 and December 31, 2003, based on our current rate of filing through June 17. At an extra \$30 per case, this increases the filing costs approximately an additional \$60,000.00. In addition, the Municipality will, over time, start to see repeat offenders of the Driving Without Insurance law (DWOI), which will increase the number of case files. We cannot as yet predict what that number will be. Currently, these cases are a high percentage of our processing, but are, as first offenses, not filed as impounds or forfeitures in District Court. The repeat offenders will be subject to impound or forfeiture.

The current administrative fee in the impound\forfeiture program, as codified in Anchorage Municipal Code chapter 9.28, is set at \$360. \$60 is for the District Court filing fee. The proposed ordinance increases the administrative fee by \$30 to cover the increased court filing fee.

THE ADMINISTRATION RECOMMENDS PASSAGE AND APPROVAL OF THE ORDINANCE.

Prepared by: Linda J. Johnson, Acting Municipal Attorney
Concur: Denis LeBlanc, Municipal Manager
Respectfully submitted: Mark Begich, Mayor

Content Information

Content ID : 000978

Type: Ordinance - AO

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE

Title: CHAPTER 9.28 TO INCREASE THE ADMINISTRATIVE FEE
FOR CIVIL IMPOUND AND FORFEITURE MATTERS.

Author: bristersc

Initiating Dept: Legal

Date Prepared: 7/11/03 9:38 AM

Director Name: Linda J. Johnson

Requested Assembly

Meeting Date 7/15/03 12:00 AM

MM/DD/YY:

Workflow History

| <u>Workflow Name</u> | <u>Action Date</u> | <u>Action</u> | <u>User</u> | <u>Security Group</u> | <u>Content ID</u> |
|--------------------------|--------------------|---------------|-------------|-----------------------|-------------------|
| AllOrdinanceWorkflow | 7/11/03 9:52 AM | Checkin | bristersc | Public | 000978 |
| Legal_SubWorkflow | 7/11/03 10:01 AM | Approve | johnsonlj | Public | 000978 |
| OMB_SubWorkflow | 7/11/03 1:52 PM | Approve | foutzrs | Public | 000978 |
| MuniManager_SubWorkflow | 7/14/03 3:34 PM | Approve | leblancdc | Public | 000978 |
| MuniMgrCoord_SubWorkflow | 7/14/03 4:13 PM | Approve | abbottmk | Public | 000978 |

07/15/03 - NEW PUBLIC HEARINGS, ITEM 14.U.

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