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Assembly Member Sullivan
Submitted by: Assembly Chair Traini /
Prepared by: Department of Assembly
For reading: November 18, 2003

ANCHORAGE, ALASKA
AO NO. 2003-155 - Amended

1 **AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE**
2 **MUNICIPAL CODE SECTIONS 8.65.030, SOLICITING, AND 9.28.026 AND 9.28.027 RELATING**
3 **TO IMPOUNDMENT AND FORFEITURE OF VEHICLES, TO AUTHORIZE IMPOUNDMENT**
4 **AND FORFEITURE OF A VEHICLE THAT IS OPERATED, DRIVEN, OR IN THE PHYSICAL**
5 **CONTROL OF AN INDIVIDUAL DURING THE COMMISSION OF THE OFFENSE OF**
6 **SOLICITING FOR PROSTITUTION.**

8
9 WHEREAS, Anchorage Municipal Code section 9.28.026 allows for seizure and *in rem* civil forfeiture of
10 motor vehicles to protect the public, remove public nuisances, deter driving under the influence, and protect
11 the public from uninsured motorists; and

12
13 WHEREAS, a motor vehicle used for the unlawful purpose of transacting the offense of solicitation for
14 prostitution constitutes a public nuisance; and

15
16 WHEREAS, prostitution has secondary deleterious effects on neighborhoods such as increased crime,
17 downgrading of property values, and perpetuation of an environment which is detrimental to the public's
18 health, safety, and welfare; and

19
20 WHEREAS, forfeiture programs for prostitution-related activities in other communities have shown that
21 the consequences of the loss of use of a vehicle through seizure or forfeiture has a deterrent effect on the
22 commission of similar future offenses.

23 NOW THEREFORE THE ANCHORAGE ASSEMBLY ORDAINS:

24
25 **Section 1.** Anchorage Municipal Code section 8.65.030 is hereby amended to add subsection 8.65.030.C
26 to read as follows:

27
28 **8.65.030 Soliciting.**

29
30 A. It is unlawful for any person to knowingly solicit, induce, entice, invite, or procure another
31 for the purpose of prostitution or assignation.

32
33 B. Violation of this section shall, upon conviction, be punished by a fine of not more than
34 \$10,000.00 or imprisonment for not more than one year, or both such fine and imprisonment.

35
36 C. A motor vehicle that is operated, driven or in the actual physical control of an individual

1 during the commission of an alleged violation of this section is declared a public nuisance and may
2 be impounded and may be forfeited to the municipality in accordance with Section 9.28.026.

3
4 (CAC 8.14.303; AO No. 98-59(S), § 1, 5-19-98; AO No. 2003-73, § 3, 4-22-03)

5
6 **Section 2.** Anchorage Municipal Code section 9.28.026 is hereby amended to read as follows:

7
8 **9.28.026 Impoundment and forfeiture of vehicle.**

9
10 A. A motor vehicle that is operated, driven or in the actual physical control of an individual
11 arrested for or charged with an alleged violation of Section 9.28.019, pertaining to driving while
12 license suspended/revoked/cancelled, Section 9.28.020, pertaining to driving while under the
13 influence [INTOXICATED], an alleged violation of Section 9.28.022, pertaining to refusal to submit
14 to chemical tests, [OR] Section 9.28.030, pertaining to failure to have insurance, or Section 8.65.030,
15 pertaining to soliciting, may be impounded and may be forfeited to the municipality in accordance
16 with this section.

17
18 B. It shall be presumed that a vehicle operated by or driven by or in the actual physical control
19 of an individual arrested for or charged with an alleged violation of Section 9.28.030, Section
20 9.28.019, Section 9.28.020, [OR] Section 9.28.022, or Section 8.65.030, has been so operated by the
21 registered owners thereof or has been operated by another person with the knowledge and consent
22 of the registered owners. A vehicle so operated is declared to be a public nuisance for which the
23 registered owners hold legal responsibility subject only to the defenses as set forth by law. The
24 purposes of this section and the [CRIMINAL] impoundment and forfeiture provisions of Sections
25 9.28.019, 9.28.020, 9.28.022, [AND] 9.28.030, and 8.65.030 include protecting the public, removing
26 public nuisances, deterring driving under the influence, and protecting the public from uninsured
27 motorists, but do not include the generation of revenue[S] for the municipality.

28
29 C. General provisions.

30
31 1. In the case of an alleged violation of Section 9.28.019, 9.28.020, 9.28.022, [OR]
32 subsection [SUBSECTION] 9.28.030B., or Section 8.65.030, and in addition to the penalties
33 set forth in those sections, the vehicle used in the alleged violation shall be impounded for
34 30 days if the person driving, operating, or in the actual physical control of the vehicle has
35 not been previously convicted and shall be forfeited to the municipality if the person driving,
36 operating, or in the actual physical control of the vehicle has been previously convicted.
37 Impoundment may be accomplished through a seizure of the vehicle incident to an arrest or
38 pursuant to a court order entered in the course of civil or criminal enforcement proceedings.
39 Impoundment through a seizure of the vehicle incident to an arrest is at the discretion of the
40 arresting officer.

41
42 2. A case seeking civil impoundment or forfeiture may be heard and decided by either
43 the district court or a municipal administrative hearing officer pursuant to Chapter 3.60.

1 References in this section to "the court" or "a court" shall be interpreted to include either the
2 district court or any municipal administrative hearing officer. An administrative hearing
3 officer under this section may be a regular municipal employee, an independent contractor,
4 or an employee of a municipal agency such as the parking authority. In addition to cases
5 brought under this section an administrative hearing officer may hear other Code violations
6 which may be disposed of by administrative hearing. Hearings before an administrative
7 hearing officer shall take place no less than seven days and no more than 30 days after a
8 registered owner or lienholder requests a hearing. Hearings before an administrative hearing
9 officer shall be governed by Chapter 3.60 to the extent that the provisions of Chapter 3.60
10 do not conflict with this section. If the provisions of this section conflict with the provisions
11 of Chapter 3.60, the provisions of this section govern.

12
13 3. Upon the request of the municipality or a claimant, a civil proceeding seeking
14 impoundment or forfeiture shall be held in abeyance until conclusion of any pending criminal
15 charges arising out of the incident giving rise to the forfeiture or impoundment action under
16 Section 9.28.019, 9.28.020, 9.28.022, [OR] 9.28.030, or 8.65.030.

17
18 4. The court shall award the prevailing party in an impoundment or forfeiture case its
19 reasonable attorneys' fees and costs. Costs under this section shall include but are not limited
20 to filing costs, advertising costs, police officer time required for testimony, and such other
21 costs incurred in processing the case, including any costs specified by this section.

22
23 5. Parties having an interest in the vehicle, including lienholders, as shown on the
24 vehicle ownership records of the State of Alaska, division of motor vehicles or an agency
25 with similar responsibilities in another state shall be served with notice of the civil action by
26 certified mail, with return receipt requested and restricted delivery, sent to their address of
27 record as shown in the vehicle ownership records of the State of Alaska or an agency with
28 similar responsibility in another state or residence address as indicated in the police report.
29 In a forfeiture action, if the owners or lienholders do not receive service through the mail, the
30 owners or lienholders may be served at the municipality's option by personal service or by
31 publication. If an owner or lienholder is served personally, service shall occur as provided
32 for in Alaska Rule of Civil Procedure 4(d)(1)--(12). If an owner or lienholder is served by
33 publication, a notice of forfeiture action accurately describing the vehicle, the date of
34 impoundment, the place of impoundment, and directions as to who to contact for more
35 information shall be published at least once per week for two consecutive weeks in a
36 newspaper of general circulation and such owners and lienholders shall be deemed served.
37 For the purposes of this section, a newspaper of general circulation is one which is
38 recognized by the state as qualified to publish default sale notices. Any party failing to appear
39 in an impoundment action within 20 days of service of notice or 30 days of the seizure of the
40 vehicle, whichever comes first, waives the right to object to impound. Any party failing to
41 appear in the civil action within 20 days of service of notice or completion of publication
42 waives the right to object to forfeiture. Any party who requests a hearing in a civil action
43 shall be deemed served. Any party who secures the release of a vehicle pending hearing shall

1 accept service of notice of the civil action as a condition of release. For actions filed in
2 district court, district court civil rules shall apply.
3

4 6. Any requests for release of a vehicle which is the subject of a civil impoundment or
5 forfeiture action filed under this section which are brought by a person or entity who has not
6 been charged with a violation of Section 9.28.019, 9.28.020, 9.28.022, [OR] 9.28.030, or
7 8.65.030 must be brought in the forum of the civil action.
8

9 7. At a hearing before the court in a civil action, a person who claims an ownership or
10 security interest in the motor vehicle may avoid impound or avoid forfeiture of that person's
11 interest if the claimant can establish by a preponderance of the evidence that:
12

13 a. The claimant has an interest in the motor vehicle at the time of the alleged
14 violation or, if acquired after the alleged violation, the interest was acquired in good
15 faith and not for purposes of avoiding impound or forfeiture;
16

17 b. A person other than the claimant was in possession of the vehicle and was
18 responsible for or caused the act which resulted in the impound or forfeiture;
19

20 c. If applicable, before permitting the alleged operator to gain custody or control
21 of the motor vehicle, the claimant did not know or have reasonable cause to believe
22 that if the vehicle were operated by the alleged operator it would be operated in
23 violation of this Code; and
24

25 d. A claimant that is a regulated lienholder meets its burden of proof under this
26 subsection by filing with the court a copy of the vehicle's certificate of title or other
27 security instrument reflecting the lien, together with an affidavit stating the amount
28 of the lien and stating that the claimant is a regulated lienholder and was not in
29 possession of the vehicle at the time of the act which resulted in the seizure of the
30 vehicle. The presumptions provided in this subsection shall not apply to regulated
31 lienholders.
32

33 For purposes of this section, when a person other than the claimant was in possession of the
34 vehicle and was driving with a suspended, revoked, or cancelled license or in violation of a
35 limited license or without a valid driver's license, it is presumed that the claimant did have
36 reasonable cause to believe that the vehicle would be used in violation of this Code. Also for
37 purposes of this section, when the claimant and driver are not the same person and the
38 claimant and driver have a familial relationship, such as husband and wife, father and
39 daughter, mother and stepson, etc., it shall be presumed that the claimant is responsible and
40 that the vehicle was operated by the driver, in violation of Section 9.28.019, 9.28.020,
41 9.28.022, [OR] 9.28.030, or 8.65.030, with the knowledge and consent of the claimant.
42

43 8. Upon receiving notice from the court of the time and place for a hearing in a civil

1 action, the municipality shall, unless such notice has been provided by the court, provide to
2 every person who has an ascertainable ownership or security interest in the motor vehicle as
3 indicated by the State of Alaska, division of motor vehicles or any agency with similar
4 responsibilities in another state written notice that includes:

- 5
- 6 a. A description of the motor vehicle;
 - 7
 - 8 b. The time and place of the forfeiture or impound hearing;
 - 9
 - 10 c. The legal authority under which the motor vehicle may be impounded or
11 forfeited;
 - 12
 - 13 d. Notice of the right to intervene to protect the interest in the motor vehicle.
 - 14

15 9. Pursuant to Alaska Rule of Court 41(a)(1), the municipality may enter into an
16 agreement with the registered owner or lienholder of the vehicle to resolve a civil impound
17 or forfeiture action arising under Section 9.28.019, 9.28.020, 9.28.022, or 9.28.030 and
18 permit release of the vehicle. Any such agreement shall include:

- 19
- 20 a. Acceptance by the owner or lienholder of responsibility for meeting the
21 requirements of subsection C.10 of this section;
 - 22
 - 23 b. Agreement that the owner or lienholder will take reasonable steps to prevent
24 the individual arrested for or charged with driving under the influence or with refusal
25 to submit to chemical tests from operating the vehicle until properly licensed; and
26
 - 27 c. Acknowledgment by the owner or lienholder that failure to fulfill his or her
28 obligations under the agreement may result in forfeiture of the vehicle at the option
29 of the municipality. This requirement shall not apply to a regulated lienholder
30 required by other law or by the terms of the agreement creating the lien to permit the
31 individual to recover the vehicle upon payment of the lien or cure of any default.
 - 32

33 10. Unless the release is pursuant to an agreement under Section 9.28.026.C.9, the person
34 seeking to redeem the vehicle must obtain an order authorizing release of the vehicle. A
35 release shall not be granted unless the applicant can:

- 36
- 37 a. Unless, waived by the municipality if the vehicle is inoperable, provide proof
38 of insurance or an affidavit of insurance;
 - 39
 - 40 b. Provide proof of ownership or, if a lienholder, a legal right to repossess the
41 vehicle; and
 - 42
 - 43 c. Pay or provide proof of payment of any costs imposed, including the impound

1 fees, storage fees and any court costs imposed. The impound fee shall be the actual
2 cost of impound plus an administrative charge of \$360.00 to offset the municipality's
3 processing costs. If the court makes a specific finding following a contested hearing
4 or pursuant to a stipulation between the parties that the seizure of the vehicle was
5 legally unjustified, the vehicle shall be released at no cost if the person seeking to
6 reclaim the vehicle reclaims the vehicle within five days after the issuance of the
7 court's decision making such a finding. A vehicle ordered released at no charge under
8 this subsection is subject to the provisions of AS 28.10.502 if the vehicle is not
9 reclaimed within five days after the issuance of the court's decision. The provisions
10 of Chapter 9.50 do not apply to vehicles seized under the authority of Section
11 9.28.026.

12
13 11. An acquittal or a conviction of a lesser offense in a criminal proceeding for a
14 violation of Chapter 9.28 provides a defense in a civil proceeding seeking impoundment or
15 forfeiture of the vehicle if that civil proceeding is based on the same conduct that forms the
16 basis for the criminal charge.

17
18 12. The provisions of this section shall be interpreted independently of state laws
19 regarding impoundment or forfeiture of motor vehicles.

20
21 13. Release of vehicle pending hearing.

22
23 a. A claimant who is not charged with a violation of Section 9.28.019, 9.28.020,
24 9.28.022, [OR] 9.28.030, or 8.65.030 may petition for setting or revision of bail
25 release before a civil action is filed. Such petition shall be made to a court in the
26 municipality.

27
28 b. A vehicle return bond shall be set for each vehicle alleged in the complaint
29 to have been used in an alleged violation of Section 9.28.019, 9.28.020, 9.28.022,
30 [OR] 9.28.030, or 8.65.030. The purpose of setting a vehicle return bond on the
31 vehicle is to secure the presence of the vehicle and to provide security to be forfeited
32 along with the proceeds of a sale, transfer, or encumbrance if the vehicle is sold,
33 transferred, or encumbered after the vehicle has been released pending hearing. If the
34 vehicle's release has been obtained through the posting of a vehicle return bond and
35 the vehicle is not returned pursuant to the court's order, the municipality may, in
36 addition to obtaining the forfeited bond funds, seize the vehicle to implement the
37 impoundment or forfeiture ordered by the court. A person who secures the release of
38 a vehicle pursuant to a vehicle return bond must return the vehicle upon order of the
39 court. If a vehicle has not been impounded for a longer period than the vehicle would
40 be impounded if the person were convicted, the court shall not delete the requirement
41 of the vehicle return bond or exonerate a posted vehicle return bond until the vehicle
42 for which bond has been posted is returned pursuant to court order. A vehicle return
43 bond may be posted in cash only. A vehicle return bond shall be set at a minimum

of:

- i. Two hundred fifty dollars if the person charged with a violation of Section 9.28.019, 9.28.020, 9.28.022, [OR] 9.28.030, or 8.65.030 has not been previously convicted;
- ii. 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, or 8.65.030 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, 9.28.022, [OR] 9.28.030, or 8.65.030 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, 9.28.022, [OR] 9.28.030, or 8.65.030 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, 9.28.022, [OR] 9.28.030, or 8.65.030 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, 9.28.022, [OR] 9.28.030, or 8.65.030 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 insurance or an affidavit of insurance, proof of ownership of the vehicle, payment of the vehicle return bond, and payment of towing and storage fees, including the administrative fee of ~~\$360.00~~ to offset the ^{\$390.00} municipality's processing costs. The insurance requirement may be waived by the municipality if the vehicle is inoperable. 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

1 payment of a fee charged for monitoring the recovery of such personal property. Such fee
2 shall be set by contract between the towing and storage contractor and the municipality if it
3 is not established by ordinance. Such fee shall be recoverable by the owner of the vehicle if
4 a court makes a specific finding that the seizure of the vehicle was legally unjustified
5 following a contested hearing or pursuant to a stipulation between the parties.
6

7 14. As used in this section, the term "registered owner" refers to the owner of the vehicle
8 at the time of offense as shown in the vehicle ownership records of the State of Alaska,
9 division of motor vehicles or another agency with similar responsibilities in another state,
10 but may include subsequent good faith purchasers.
11

12 15. For purposes of this section, time shall be calculated as set forth in Alaska Rule of
13 Civil Procedure 6.
14

15 16. Assessed or appraised value of a motor vehicle shall be based upon the Automobile
16 Dealers Association Book (Blue Book) for the same or similar make and model and
17 accessorized motor vehicle. Should there be no Blue Book value for the motor vehicle, the
18 value shall be \$500.00.
19

20 17. For purposes of this section and only for purposes of proceedings before an
21 administrative hearing officer under this section, the police report, which may include the
22 narrative; accompanying documents; computer print-outs from data bases operated by police
23 agencies and/or government agencies regulating motor vehicles showing the ownership of
24 the vehicle, the driver's license status of the driver, and the record of criminal convictions of
25 the driver; and/or tape recordings, is admissible evidence so long as it is signed with either
26 the name, initials, badge number, or other identifying mark of an employee of the
27 municipality in a statement made under penalty of perjury.
28

29 18. For purposes of this section, convictions for violation of Section 9.28.020 and 9.28.022
30 arising out of a single transaction and a single arrest are considered one previous conviction.
31 "*Previously convicted*" means:
32

33 a. If charged with violating Section 9.28.019, having been convicted in this or
34 another jurisdiction of operating a motor vehicle while their license is canceled,
35 suspended or revoked, or in violation of a limitation, under Section 9.28.019 or
36 another law or ordinance with substantially similar elements within ten years
37 preceding the date of the present offense.
38

39 b. If charged with violating either Section 9.28.020 or 9.28.022, having been
40 convicted in this or another jurisdiction of operating a motor vehicle, aircraft, or
41 watercraft while under the influence under Section 9.28.020 or another law or
42 ordinance with substantially similar elements, or of refusal to submit to a chemical
43 test under Section 9.28.022 or 28.35.032 or another law or ordinance with

1 substantially similar elements.
2

3 c. If charged with violating Section 9.28.030, having been convicted in this or
4 another jurisdiction of operating a motor vehicle without the required security in
5 effect at the time of operation under Section 9.28.030 or another law or ordinance
6 with substantially similar elements within ten years preceding the date of the present
7 offense.
8

9 d. If charged with violating Section 8.65.030C, having been convicted in this or
10 another jurisdiction of soliciting under Section 8.65.030C or another law or
11 ordinance with substantially similar elements within ten years preceding the date of
12 the present offense.
13

14 19. The burden of proof for an action brought pursuant to this section is preponderance
15 of the evidence.
16

17 20. For purposes of this section, the parties may agree to extend, reduce or otherwise alter
18 the time limits set by this Code.
19

20 21. For purposes of this section, the terms "vehicle," "driver," "person" and "physical
21 control" shall have those meanings as set forth in Chapter 9.04 and this chapter. Other terms
22 not specifically referenced shall have the meanings set forth in this title unless the context
23 clearly indicates otherwise. For purposes of this chapter, the term "vehicle" shall have the
24 same meaning as the term "motor vehicle" as defined in Section 9.04.290.
25

26 22. The owner of a vehicle or the designated agent of the owner of a vehicle that is the
27 subject of an impoundment or forfeiture action may relinquish to the municipality any
28 ownership interest possessed by the owner as part of an agreement to resolve the action.
29

30 23. The term "regulated lienholder" as used in this section shall mean an entity whose
31 lien on the vehicle is a result of lending activities that are subject to regulation by the
32 National Credit Union Administration, the comptroller of the currency or other federal
33 banking regulators, the Federal Trade Commission, or the state department of commerce and
34 economic development.
35

36 24. Nothing in this section shall be construed to place upon a regulated lienholder a duty
37 to inquire into the driving record of any loan applicant or any member of the loan applicant's
38 family or household, and failure to do so shall not be usable as evidence against the regulated
39 lienholder in any forfeiture proceeding or other civil action. Knowledge from other sources
40 of the loan applicant's driving record is usable only to the extent that it is relevant under
41 subsection C.7 of this section.
42

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

1
2 a. No reasonable suspicion for the stop of the vehicle leading to an arrest for
3 soliciting, driving without a valid license, driving under the influence, or operating
4 without the required security based on the individual allegedly operating, driving, or
5 being in actual physical control of the vehicle; or

6
7 b. No probable cause for the arrest of an individual for soliciting, driving
8 without a valid license, driving under the influence, or operating without the required
9 security based on the individual allegedly operating, driving, or being in actual
10 physical control of the vehicle.

11
12 D. Impoundment.

13
14 1. A motor vehicle that is operated, driven, or in the actual physical control of an
15 individual arrested for, or charged with, an alleged violation of Section 9.28.019, 9.28.020,
16 9.28.022, [OR] 9.28.030, or 8.65.030 may be ordered impounded either upon conviction of
17 the defendant of a violation of Section 9.28.019, 9.28.020, 9.28.022, [OR] 9.28.030, or
18 8.65.030, or upon the decision of a court in a separate civil proceeding. To obtain an order
19 for impoundment in a contested proceeding, the municipality must establish by a
20 preponderance of the evidence that the vehicle was operated, driven, or in the actual physical
21 control of an individual who was acting in violation of Section 9.28.019, 9.28.020, 9.28.022,
22 [OR] 9.28.030, or 8.65.030.

23
24 2. A vehicle may be seized for impound under the circumstances set forth in subsection
25 D.3 of this section.

26
27 3. If the seizure occurs incident to an arrest or otherwise prior to a conviction or court
28 ordered impoundment the vehicle may not be held more than two days without a court order
29 obtained to continue its detention. For purposes of computing the two-day period, the day the
30 vehicle was seized is not to be included. For purposes of computing the two-day period,
31 Saturdays, Sundays, and legal holidays are not to be included.

32
33 4. A vehicle, which is ordered impounded under this section, shall be held for a period
34 of 30 days. An impoundment order may be made either upon conviction of the defendant of
35 a violation of Section 9.28.019, 9.28.020, 9.28.022, [OR] 9.28.030, or 8.65.030 or upon
36 decision of a court in a separate civil proceeding.

37
38 5. Vehicles ordered impounded under this section which are not claimed at the end of
39 the 30-day, court-ordered period of impoundment may be disposed of pursuant to the
40 provisions of AS 28.10.502. If the contents of the vehicle have not been recovered before
41 such disposal, the contents may be disposed of with the vehicle. Personal property in a
42 vehicle that is subject to a vehicle return bond under Section 9.28.026.A.13 and has not been
43 released pursuant to that vehicle return bond can be recovered from a vehicle only by the

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

7
8 E. Forfeiture.

9
10 1. To obtain an order for forfeiture under this section in a contested proceeding, the
11 municipality must establish by a preponderance of the evidence that:

12
13 a. The vehicle was operated, driven or in the actual physical control of an
14 individual who was acting in violation of Section 9.28.019, 9.28.020 or 9.28.022,
15 [OR] 9.28.030, or 8.65.030; and

16
17 b. The individual has been previously convicted.

18
19 2. A motor vehicle that is operated, driven or in the actual physical control of an
20 individual arrested or charged with an alleged violation of Section 9.28.019, 9.28.020,
21 9.28.022, [OR] 9.28.030, or 8.65.030 may be forfeited to the municipality either upon
22 conviction of the defendant of a violation of Section 9.28.019, 9.28.020, 9.28.022, [OR]
23 9.28.030, or 8.65.030 or upon decision of a court in a separate civil proceeding.

24
25 3. A motor vehicle may be seized and towed to a secure location by a peace officer or
26 a peace officer's designee upon an order issued by a court having jurisdiction over the motor
27 vehicle upon a showing of probable cause that the motor vehicle may be forfeited or
28 impounded under this section, Section 9.28.019, 9.28.020, 9.28.022, [OR] 9.28.030, or
29 8.65.030. Seizure without a court order may be made if:

30
31 a. The impoundment is incident to an arrest:

32
33 b. The motor vehicle has been ordered impounded or forfeited and that order has
34 not yet been executed; or

35
36 c. There is probable cause to believe that the motor vehicle was operated, driven
37 or in the actual physical control of an individual in violation of Section 9.28.019,
38 9.28.020, 9.28.022, [OR] 9.28.030, or 8.65.030.

39
40 A motor vehicle impounded under this subsection may not be held for more than two days
41 without a court order obtained to continue its detention.

42
43 4. A court may order impoundment of a motor vehicle subject to forfeiture in a civil

1 action filed under subsection C of this section for a minimum of 30 consecutive days.

2
3 5. A motor vehicle seized for the purpose of forfeiture or impoundment shall be held
4 in the custody of the police department or a private corporation authorized by the chief of
5 police to retain custody of the motor vehicle as designated in the first paragraph of this
6 section and subsection C.3 of this section, subject only to the orders and decrees of the court
7 having jurisdiction over any forfeiture or impoundment proceedings. If a motor vehicle is
8 seized under this section, Section 9.28.019, 9.28.020, 9.28.022, [OR] 9.28.030, or 8.65.030,
9 the chief of police or his authorized designee may:

10
11 a. Remove the motor vehicle and any contents of the motor vehicle to a place
12 designated by the court; or

13
14 b. Take custody of the motor vehicle and any contents of the motor vehicle and
15 remove it to an appropriate location for disposition. No private corporation may make
16 or perform a contract to tow, store, or retain custody of motor vehicles seized or
17 impounded under this section, Section 9.28.019, 9.28.020, 9.28.022, [OR] 9.28.030,
18 or 8.65.030 if any of the owners of that private corporation have been convicted of
19 a felony or any crime involving larceny, theft, or receiving and concealing stolen
20 property within ten years before the date of execution of the contract or during the
21 term of the contract. No private corporation may make or perform a contract to tow,
22 store, or retain custody of motor vehicles seized or impounded under this section,
23 Section 9.28.019, 9.28.020, 9.28.022, [OR] 9.28.030, or 8.65.030 if any of the
24 employees of that private corporation have been convicted of a felony or any crime
25 involving larceny, theft, or receiving and concealing stolen property within five years
26 before the date of execution of the contract or during the term of the contract.

27
28 6. Following a forfeiture order under this section, Section 9.28.019, 9.28.020, or
29 9.28.022, [OR] 9.28.030, or 8.65.030, the chief of police or his or her designee shall make
30 an inventory of the contents of any motor vehicle seized. Personal property in a vehicle that
31 is subject to a vehicle return bond under subsection C.13 of this section and has not been
32 released pursuant to that vehicle return bond can be recovered from a vehicle only by the
33 owner of the vehicle and only upon payment of a fee charged for monitoring the recovery of
34 such personal property. Such fee shall be set by contract between the towing and storage
35 contractor and the municipality if it is not established by ordinance. Such fee shall be
36 recoverable by the owner of the vehicle if a court makes a specific finding that the seizure
37 of the vehicle was legally unjustified following a contested hearing or pursuant to a
38 stipulation between the parties.

39
40 7. Upon service or completion of publication of notice of commencement of a forfeiture
41 action under subsection A.5 of this section, a person claiming interest in the property shall
42 file, within 30 days after service or completion of publication, a notice of claim setting out
43 the nature of the interest, the date it was acquired, the consideration paid, and an answer to

1 the municipality's allegations. If a claim and answer is not filed within the time specified, the
2 motor vehicle described in the municipality's allegation must be ordered forfeited to the
3 municipality without further proceedings or showings. For a regulated lienholder, the
4 requirement of a notice of claim and answer is met by the filing of the information required
5 by subsection C.7.d of this section, and by adding to the affidavit required by that subsection
6 a statement of the original amount of the loan giving rise to the lien and the current balance
7 due on that loan.

8
9 8. A claimant may petition the court for sale of a motor vehicle before final disposition
10 of court proceedings. The court shall grant a petition for sale upon a finding that the sale is
11 in the best interest of the municipality. Proceeds from the sale plus interest to the date of final
12 disposition of the court proceedings become the subject of the forfeiture action.

13
14 9. Property forfeited under this section, Section 9.28.020, 9.28.022, [OR] 9.28.030, or
15 8.65.030 shall be disposed of by the chief of police or his or her designee in accordance with
16 this subsection. Property forfeited under this section, Section 9.28.019, 9.29.020, 9.28.022,
17 [OR] 9.28.030, or 8.65.030 includes both the vehicle that is the subject of the forfeiture
18 action and the contents of the vehicle if those contents have not been recovered before the
19 date of the disposal. The chief of police or his or her designee may:

20
21 a. Sell the property at an auction conducted by an auctioneer not employed by
22 the impound contractor and use the proceeds for payment of all proper expenses of
23 seizure, custody, the costs of the auction, court costs, and municipal attorney fees,
24 provided that if such sale is arranged for by the impound contractor the municipality
25 shall receive at least 30 percent of the proceeds of any sale of forfeited vehicles
26 following deduction for the costs charged by the auctioneer for the auction of those
27 vehicles regardless of whether the costs of impound and storage exceed the value of
28 the forfeited vehicles sold;

29
30 b. Take custody of the property and use it in the enforcement of the municipal
31 and state criminal codes; or

32
33 c. Destroy the property.

34
35 Property forfeited and sold at auction pursuant to this section, Section 9.28.019, 9.28.020,
36 9.28.022, [AND] 9.28.030, and 8.65.030 shall be sold by an auctioneer approved before the
37 auction by the chief of police or his or her designee. Before the auction, the chief of police
38 or his or her designee must approve in advance the auctioneer's costs or the method for
39 determining the auctioneer's costs. The impound contractor shall provide to the chief of
40 police or his or her designee a copy of the auctioneer's report of the auction notarized by the
41 auctioneer. The municipal auditor shall certify the proper disposal of property forfeited under
42 this section, Section 9.28.019, 9.28.020, 9.28.022, [AND] 9.28.030, and 8.65.030. The chief
43 of police may adopt rules and regulations to implement this section.

1
2 10. Upon a showing that a claimant is entitled to remittance in accordance with this
3 section, the court shall order that:

4
5 a. If the claimant is entitled to the motor vehicle, it shall be delivered to the
6 claimant immediately subject to costs as described in subSection 9.28.026.C.10; or

7
8 b. If the claimant is entitled to remittance of some value less than the total value
9 of the motor vehicle, the claimant is entitled at the claimant's choice to receive either
10 the value of the claimant's interest after the sale of the vehicle at an auction following
11 deduction of the costs of the auction or, upon request and payment of the difference
12 in value by the claimant, the motor vehicle itself.

13
14 When a vehicle is subject to forfeiture under this section, and when the vehicle is sold and
15 the lienholder interest exceeds the sale price, the owner may be held responsible for the
16 difference and the municipality's costs.

17
18 11. The storage and impound costs as well as any court costs imposed, if any, for vehicles
19 impounded under subsection C.3 of this section shall be borne by the person redeeming such
20 vehicle as owner or in behalf of the owner or as having an interest in the vehicle. The amount
21 of such costs shall be determined as provided in subsections C.4 and C.10 of this section.

22
23 12. In a contested forfeiture proceeding concerning a vehicle titled in the names of more
24 than one owner on the certificate of title, the court shall follow this subsection.

25
26 a. If one owner does not avoid forfeiture, the court may order the forfeiture of
27 the entire interest of all the owners in a vehicle which is titled in the names of more
28 than one owner in the disjunctive. Title in the disjunctive is significant by the use of
29 the word "or" between the names of the owners listed on the certificate of title.

30
31 b. If such owner does not avoid forfeiture, the court shall order the forfeiture of
32 the interest of any owner in a vehicle which is titled in the names of more than one
33 owner in the conjunctive. Title in the conjunctive is signified by use of the word
34 "and" between the names of the owners listed on the certificate of title. Owners of a
35 vehicle titled in the names of more than one owner in the conjunctive are presumed
36 to own the vehicle in equal shares. In circumstances described in this subsection, the
37 court shall order that the vehicle be sold at public auction and further order that the
38 proceeds from the sale of the vehicle be held by the treasury division of the
39 municipality's finance department. After deduction of the reasonable costs of the
40 auction, an amount of the proceeds of the auction for the sale of that vehicle which
41 is equal to the interests of the owners whose interests have [BEEN] not been forfeited
42 shall be returned to those owners if those owners apply to the treasury division of the
43 municipality's finance department within 60 days of the auction. If the owners whose

1 interests have not been forfeited do not apply within that period, those funds become
2 the property of the municipality subject to the rights of any other claimant to those
3 funds.
4

5 13. Property subject to the interest of a lienholder whose interest has not been forfeited
6 may not be disposed of as provided in this section without the consent of the lienholder. A
7 regulated lienholder's interest in a vehicle shall not be subject to forfeiture in any case where:
8

9 a. The individual who allegedly used the vehicle in violation of Section
10 9.28.019, 9.28.020, 9.28.022, [OR] 9.28.030, or 8.65.030 is not the person whose
11 dealings with the lienholder gave rise to the lien; or
12

13 b. The vehicle which the individual was driving, operating, or was in actual
14 physical control of at the time of the alleged violation was not the vehicle involved
15 in the event giving rise to the conviction described in subsection D.1.b of this section.
16

17 (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,
18 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,
19 § 3, 6-3-97; AO No. 2001-51, § 1, 2-27-01; AO No. 2001-72, § 1, 7-1-02; AO No. 2001-139, § 2,
20 7-1-02; AO No. 2001-150, § 6, 8-28-01; AO No. 2003-73, §§ 12-14, 4-22-03)
21

22 **Section 3.** Anchorage Municipal Code section 9.28.027 is hereby amended to read as follows:
23


24 **9.28.027 Failure to return a vehicle that has been released under a vehicle return bond.**
25

26 It is unlawful for the person who has secured the release of a vehicle under a vehicle return bond
27 under Section 9.28.019, 9.28.020, 9.28.022, 9.28.026, [OR] 9.28.030, or 8.65.030 to willfully fail
28 to return that vehicle when ordered by a court or a municipal administrative hearing officer. Each
29 day that a vehicle is not returned constitutes a separate offense under this section.
30

31 (AO No. 95-84(S-1), § 19, 4-27-95; AO No. 2001-72, § 3, 7-1-02; AO No. 2001-139, § 3, 7-1-02)
32

33 **Section 4.** This ordinance shall become effective immediately upon passage of authorizing state
34 legislation.
35

37 PASSED AND APPROVED by the Anchorage Assembly this 17th day of December, 2003.
38

39
40
41 
42 _____
43 Chair

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ATTEST:

Balove S. Jankovic

Municipal Clerk



MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM
AM NO. 904-2003

Meeting Date: November 18, 2003

From: Assembly Chair Dick Traini

**Subject: AO 2003-155, Relating to Impoundment and Forfeiture of Vehicles
Operated by Individuals Soliciting for Prostitution.**

I have prepared an ordinance amending the Municipal Code pertaining to vehicle impoundment and forfeiture to include Section 8.65.030, solicitation for prostitution. Prostitution is a serious matter in the city of Anchorage, and affirmative measures should be taken to remediate this conduct which is inimical to the public's health, safety, and welfare. Vehicles used in solicitation for prostitution are public nuisances and forfeiture of them should deter this illicit conduct. Additionally, a nuisance is created in neighborhoods by vehicles that are being used for the purposes of soliciting or committing acts of prostitution. Persons who use vehicles to solicit or engage in acts of prostitution contribute to blight and increased crime in neighborhoods. Vehicles also facilitate the commission of crimes involved with prostitution by providing cover and transporting prostitutes and customers onto neighborhood streets where the vehicle can be used as a place to engage in acts of prostitution. Hence, protection of the public's health, safety, and welfare is met by impounding or forfeiting vehicles used by prostitutes and individuals soliciting prostitutes for their services.

It is respectfully requested that the Assembly adopt ordinance serial number 2003-155.

Dick Traini
Assembly Chair



MUNICIPALITY OF ANCHORAGE
ASSEMBLY INFORMATION MEMORANDUM

No. AIM 100-2003

MEETING DATE: December 16, 2003

FROM: **Assembly Chair Traini**

SUBJECT: **SUMMARY OF ECONOMIC EFFECTS FOR AO 2003-155: AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS 8.65.030, SOLICITING, AND 9.28.026 AND 9.28.027 RELATING TO IMPOUNDMENT AND FORFEITURE OF VEHICLES, TO AUTHORIZE IMPOUNDMENT AND FORFEITURE OF A VEHICLE THAT IS OPERATED, DRIVEN, OR IN THE PHYSICAL CONTROL OF AN INDIVIDUAL DURING THE COMMISSION OF THE OFFENSE OF SOLICITING FOR PROSTITUTION**

The Summary of Economic Effects for the above-referenced ordinance is provided for your information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dick Traini".

Dick Traini
Assembly Chair

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects -- General Government

AO Number: 2003-155

Title: AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS 8.65.030, SOLICITING, AND 9.28.026 AND 9.28.027 RELATING TO IMPOUNDMENT AND FORFEITURE OF VEHICLES, TO AUTHORIZE IMPOUNDMENT AND FORFEITURE OF A VEHICLE THAT IS OPERATED, DRIVEN, OR IN THE PHYSICAL CONTROL OF AN INDIVIDUAL DURING THE COMMISSION OF THE OFFENSE OF SOLICITING PROSTITUTION.

Sponsor: Assembly Chair Traini

Preparing Agency: Assembly

Others Impacted:

CHANGES IN EXPENDITURES AND REVENUES:

(In Thousands of Dollars)

	<u>FY03</u>	<u>FY04</u>	<u>FY05</u>	<u>FY06</u>	<u>FY07</u>
Operating Expenditures					
1000 Personal Services	\$ -	-	-	-	-
2000 Non-Labor	-	-	-	-	-
3900 Contributions	-	-	-	-	-
4000 Debt Service	-	-	-	-	-
TOTAL DIRECT COSTS:	\$ -	\$ -	\$ -	\$ -	\$ -
Add: 6000 Charges from Others					
Less: 7000 Charges to Others					
FUNCTION COST:	\$ -	\$ -	\$ -	\$ -	\$ -
REVENUES:	\$ -				
CAPITAL:	\$ -	\$ -	\$ -	\$ -	\$ -

POSITIONS: FT/PT and Temp

PUBLIC SECTOR ECONOMIC EFFECTS:

The Anchorage Police Department reports that there have been 55 arrests for soliciting involving a vehicle in the last three years. That yields an average of 18 vehicles that would be impounded each year. Because all of the impounding costs and administrative fees are recovered from the defendant, the costs to the Municipality are negligible. APD also reports that, since 1998, there have only been four repeat arrests for solicitation. This yields less than one vehicle forfeited each year. Therefore revenue from forfeitures would also be negligible.

PRIVATE SECTOR ECONOMIC EFFECTS:

Currently, all costs associated with impounding of vehicles are recovered from defendants. These costs include the towing and impound fee which varies on the basis of a competitive bid, and an administrative fee of \$390 (\$200 for declined cases).

Prepared by:



Telephone: 343-4763

2003 DEC 11 PM 4:06
 RECEIVED
 MUNICIPAL CLERK

1	SUBJECT OF AGENCY MATTER	DATE RECEIVED 12-11-81
	SUBJECT OF BUREAU MATTER FOR AN AGENCY	DATE RECEIVED BY BUREAU
2	DEPARTMENT NAME	DEPARTMENT NUMBER
3	THE PERMANENT DEPARTMENT NAME	DEPARTMENT NUMBER
4	COORDINATED WITH THE DEPARTMENT OF	DATE
	Mayor	
	Heritage Land Bank	
	North Park Airport	
	Marshall Light & Power	
	Port of Anchorage	
	Solid Waste Division	
	Water & Wastewater Utility	
	Municipal Manager	
	Cultural & Recreational Services	
	Employee Relations	
	Finance, Chief Financial Officer	
	Fire	
	Health & Human Services	
	Office of Management & Enterprise	
	Management Information Systems	
	Police	
	Planning, Development & Transportation	
	Development Services	
	Facility Management	
	Planning	
	Project Management & Construction	
	Street Maintenance	
	Traffic	
	Public Transportation Department	
	Purchasing	
	Municipal Attorney	
	Municipal Clerk	
	Other	
5	SPECIAL INSTRUCTIONS	

11/18/03

1	As Chairman, I am pleased to announce that the City of... and 928,027... During the Commission...	11/18/03	
2	Assembly Commission	11/18/03	
3	Administrative Services Division	11/18/03	
4	<ul style="list-style-type: none"> Mayor Deputy Mayor City Manager City Clerk City Treasurer City Attorney City Engineer City Planner City Historian City Auditor City Health Officer City Police Chief City Fire Chief City Public Works Director City Parks and Recreation Director City Economic Development Director City Housing and Community Development Director City Cultural and Historical Resources Director City Human Resources Director City Information Technology Director City Finance Director City Facilities Director City Public Safety Director City Planning Director City Development Director City Family Services Director City Planning Director City Project Management Director City Street Maintenance Director City Traffic Director City Public Transportation Director City Recreation Director City Municipal Code City Other 	11/18/03	11/18/03
5	Special Instructions/Comments	11/18/03	11/18/03
6	Assembly Hearing Date	11/18/03	11/18/03

CLERK OF CITY
 JOHN C. MOYER
 MB 1