

Postponed indefinitely 5/23/06

Submitted by: Assemblymember BAUER

Prepared by: Assembly Counsel

For reading: May 2, 2006

**ANCHORAGE, ALASKA
AO NO. 2006-65**

1 AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING
2 ANCHORAGE MUNICIPAL CODE SECTION 9.28.026, IMPOUNDMENT AND
3 FORFEITURE OF VEHICLE, TO MAKE IMPOUNDMENT OF A VEHICLE FOR
4 CITATION OR ARREST FOR CERTAIN SERIOUS TRAFFIC VIOLATIONS
5 MANDATORY EXCEPTING PROOF OF INSURANCE VIOLATIONS; AMENDING
6 AMC 9.28.030, INSURANCE OR OTHER SECURITY REQUIRED, AND AMC
7 9.48.130, RELATING TO FINES FOR VEHICULAR OFFENSES, TO MAKE PROOF
8 OF INSURANCE VIOLATIONS CORRECTIBLE AND DISMISSIBLE OFFENSES AND
9 INCREASING THE FINE TO \$250 IF NOT CORRECTED.

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12 THE ANCHORAGE ASSEMBLY ORDAINS:

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14 **Section 1.** Anchorage Municipal Code section 9.28,026, Impoundment and Forfeiture of
15 Vehicle, is hereby amended to read as follows:

16
17 **9.28.026 Impoundment and forfeiture of vehicle.**

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19 A. A motor vehicle that is operated, driven or in the actual physical control of an
20 individual arrested for or charged with an alleged violation of Section 9.28.019,
21 pertaining to driving while license suspended/revoked/cancelled, Section 9.28.020,
22 pertaining to driving while under the influence, an alleged violation of Section 9.28.022,
23 pertaining to refusal to submit to chemical tests, [SECTION 9.28.030, PERTAINING TO
24 FAILURE TO HAVE INSURANCE,] or Section 8.65.030 , pertaining to soliciting, shall
25 [MAY] be impounded and may be forfeited to the municipality in accordance with this
26 section.

27
28 B. A motor vehicle that is operated, driven or in the actual physical control of an
29 individual arrested for or charged with an alleged violation of Section 9.28.030B.3,
30 pertaining to operating a motor vehicle without the required security in effect at the time
31 of operation, may be impounded through a seizure of the vehicle incident to the citation
32 or arrest, at the discretion of the officer. If the driver alleges that the required security is
33 in effect and identifies an entity registered in the state to provide security, but the driver
34 fails to provide the officer with the required proof, the officer shall not seize the vehicle
35 for impoundment without first making a reasonable attempt to contact the entity for
36 telephonic verification.
37

1 C [B]. It shall be presumed that a vehicle operated by or driven by or in the actual
2 physical control of an individual arrested for or charged with an alleged violation of
3 Section 9.28.030B.3, Section 9.28.019, Section 9.28.020, Section 9.28.022, or Section
4 8.65.030, has been so operated by the registered owners thereof or has been operated by
5 another person with the knowledge and consent of the registered owners. A vehicle so
6 operated is declared to be a public nuisance for which the registered owners hold legal
7 responsibility subject only to the defenses as set forth by law. The purposes of this
8 section and the impoundment and forfeiture provisions of Sections 9.28.019, 9.28.020,
9 9.28.022, 9.28.030, and 8.65.030 include protecting the public, removing public
10 nuisances, deterring driving under the influence, and protecting the public from uninsured
11 motorists, but do not include the generation of revenue for the municipality.

12
13 D [C]. General provisions.

14
15 1. In the case of an alleged violation of Section 9.28.019, 9.28.020, 9.28.022,
16 subsection 9.28.030B.3, or Section 8.65.030, and in addition to the penalties set
17 forth in those sections, the vehicle used in the alleged violation shall be
18 impounded for 30 days if the person driving, operating, or in the actual physical
19 control of the vehicle has not been previously convicted and shall be forfeited to
20 the municipality if the person driving, operating, or in the actual physical control
21 of the vehicle has been previously convicted. Impoundment may be accomplished
22 [THROUGH A SEIZURE OF THE VEHICLE INCIDENT TO AN ARREST
23 OR] pursuant to a court order entered in the course of civil or criminal
24 enforcement proceedings [.] or [IMPOUNDMENT] through a seizure of the
25 vehicle incident to a citation or an arrest [IS AT THE DISCRETION OF THE
26 ARRESTING OFFICER].

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28 ***

29 E [D]. Impoundment.

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31 1. A motor vehicle that is operated, driven, or in the actual physical control
32 of an individual arrested for, or charged with, an alleged violation of Section
33 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030 may be ordered impounded
34 either upon conviction of the defendant of a violation of Section 9.28.019,
35 9.28.020, 9.28.022, 9.28.030B.3, or 8.65.030, or upon the decision of a court in a
36 separate civil proceeding. To obtain an order for impoundment in a contested
37 proceeding, the municipality must establish by a preponderance of the evidence
38 that the vehicle was operated, driven, or in the actual physical control of an
39 individual who was acting in violation of Section 9.28.019, 9.28.020, 9.28.022,
40 9.28.030B.3, or 8.65.030.

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42 ***

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, 9.28.022, 9.28.030B.3, or 8.65.030 or upon decision of a court in a separate civil proceeding.

6. [A VEHICLE IMPOUNDED FOR A FIRST OFFENSE UNDER AMC 9.28.030B.1. OR B.2. MAY BE RELEASED TO THE OWNER UPON PAYMENT OF A \$200.00 ADMINISTRATIVE FEE, PLUS ANY FEES OWED TO THE TOWING AND STORAGE CONTRACTOR. THIS] Civil release of the vehicle does not affect or change the criminal proceedings incurred as a result of the violation.

F[E]. Forfeiture.

1. 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, 9.28.030B.3, or 8.65.030; 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 9.28.019, 9.28.020, 9.28.022, 9.28.030B.3, or 8.65.030 may be forfeited to the municipality either upon conviction of the defendant of a violation of 9.28.019, 9.28.020, 9.28.022, 9.28.030B.3, or 8.65.030 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, 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030. 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 9.28.019, 9.28.020, 9.28.022, 9.28.030B.3, or 8.65.030.

(Code Revisor is instructed to amend all internal references to relettered subsections B-F.)

(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; AO No. 2001-51, § 1, 2-27-01; AO No. 2001-72, § 1, 7-1-02; AO No. 2001-139, § 2, 7-1-02; AO No. 2001-150, § 6, 8-28-01; AO No. 2003-73, §§ 12--14, 4-22-03; AO No. 2003-106, §§ 7, 8, 7-1-03; AO No. 2003-152S, § 2, 1-1-04; AO No. 2003-155, § 2, 6-1-04; AO No. 2004-61, § 1, 3-2-04)

Section 2. Anchorage Municipal Code Section 9.28.030, Insurance or Other Security Required, is amended to make failure to carry and produce proof of insurance correctible offenses by amending subsection 9.28.030 C. 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:

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

C. A person convicted of violating subsections B.1. or B.2. shall pay a fine of \$250.00 [\$100.00] unless the person produces to an authorized representative of the Anchorage Police Department, or at trial, 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 offense shall be dismissed and the fine shall be voided [\$50.00].

(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); AO No. 2001-139, § 1, 7-1-02; AO No. 2002-125, § 7, 8-20-02; AO No. 2002-175, § 1, 1-14-03; AO No. 2003-73, §§ 15, 16, 4-22-03; AO No. 2003-106, §§ 9, 10, 7-1-03; AO No. 2003-157, § 1, 12-17-03)

Section 3. Anchorage Municipal Code section 9.48.130 is hereby amended to read as follows:

9.48.130 Vehicular offenses amenable to disposition without court appearance by payment of a fine, offenses requiring court appearance, or offenses correctable without fine or appearance.

In accordance with AS 28.05.151, a citation issued for violation of any of the following sections of this title shall be subject to disposition with payment of a fine in lieu of a court appearance or as otherwise prescribed. Violations committed within highway work zones shall be subject to double the fine amount indicated. Pursuant to AS 28.05.151(e), an offense listed on this schedule may not be disposed of without court appearance if the offense is in connection with a motor vehicle accident that results in the death of a person.

TABLE INSET:

SERIOUS TRAFFIC OFFENSES		
Reckless driving	9.28.010.A	Mand/Cr
Eluding a police officer	9.28.011	Mand/Cr
Careless driving	9.28.015	150.00
Driving under the influence	9.28.020.A	Mand/Cr

Refusal to submit to chemical test	9.28.022.C	Mand/Cr
Failure to return a vehicle that has been released under a vehicle return bond	9.28.027	300.00
Driving w/o proof of security	9.28.030.C	<u>Corr/250.00</u> [50.00]
***	***	***
Corr	=	A correctable/dismissible offense. A citation for one of these offenses may be dismissed (or voided) if proof of correction is presented to an inspection official <u>or in the case of 9.28.030, proof of the required security, that the security had been issued prior to the time of the offense, and that the security was valid at the time of the offense is presented to an authorized representative of the Anchorage Police Department, or at trial.</u> If the required repair is not made and shown to an inspecting officer within the specified time, <u>or the proof of security under 9.28.030C. is not presented,</u> the citation converts to a set fine in the amount indicated and must be resolved under Section 9.48.030.
Mand/Cr	=	A misdemeanor which requires a mandatory appearance in court for arraignment. A defendant charged with a misdemeanor for which no bail forfeiture amount has been set has a right to a jury trial and, if indigent, a lawyer at government expense.

(CAC 9.48.060; AO No. 78-72; AO No. 88-12; AO No. 88-167; AO No. 88-180; AO No. 89-134; AO No. 90-24; AO No. 94-68(S), § 38, 8-11-94; AO No. 95-67(S), § 5, 7-1-95; AO No. 95-102, § 1, 4-26-95; AO No. 95-117, § 3, 6-29-95; AO No. 95-163(S), § 20, 8-8-95; AO No. 99-15, § 1, 2-9-99; AO No. 2000-130, § 2, 9-12-00; AO No. 2001-51, § 1, 2-27-01; AO No. 2001-145(S-1), § 8, 12-11-01; AO No. 2003-157, § 2, 12-17-03; AO No. 2004-63, § 2, 4-13-04)

State law references: Fine schedule for violations not requiring court appearance, permitted, AS 28.05.151.

Section 4. This ordinance shall become effective immediately upon its passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2006.

Chair

ATTEST:

Municipal Clerk

Municipality of Anchorage
MUNICIPAL CLERK'S OFFICE
Agenda Document Control Sheet

AO 200665

(SEE REVERSE SIDE FOR FURTHER INFORMATION)

1	SUBJECT OF AGENDA DOCUMENT	DATE PREPARED	
	IMPOUNDMENT AND FORFEITURE OF VEHICLE	4/25/06	
2	DEPARTMENT NAME	Indicate Documents Attached	
	Assembly	<input checked="" type="checkbox"/> AO <input type="checkbox"/> AR <input type="checkbox"/> AM <input type="checkbox"/> AIM	
3	THE PERSON THE DOCUMENT WAS ACTUALLY PREPARED BY	DIRECTOR'S NAME	
	Susan Lutz - Assembly Counsel's Office	Dan Sullivan, Chair	
4		HIS/HER PHONE NUMBER	
		343-4572	
COORDINATED WITH AND REVIEWED BY		INITIALS	DATE
Mayor			
Municipal Clerk			
Municipal Attorney			
Employee Relations			
Municipal Manager			
Cultural & Recreational Services			
Fire			
Health & Human Services			
Merrill Field Airport			
Municipal Light & Power			
Office of Management and Budget			
Police			
Port of Anchorage			
Public Works			
Solid Waste Services			
Transit			
Water & Wastewater Utility			
Executive Manager			
Community Planning & Development			
Finance, Chief Fiscal Officer			
Heritage Land Bank			
Management Information Services			
Property & Facility Management			
Purchasing			
Other			
5	Special Instructions/Comments		
	CONSENT AGENDA - INTRODUCTION		
6	ASSEMBLY HEARING DATE REQUESTED	7	PUBLIC HEARING DATE REQUESTED
	5/2/06		5/23/06

2006 APR 25 PM 2:11
 CLERK'S OFFICE



MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM

NO. AM 320 -2006

Meeting Date: May 2, 2006

From: Assemblymember Bauer

Subject: AO 2006-65 — Amending AMC 9.28.026, 9.28.026, Impoundment and Forfeiture of Vehicle, to Make Impoundment of A Vehicle for Citation or Arrest for Certain Serious Traffic Violations Mandatory Excepting Proof of Insurance Violations; Amending AMC 9.28.030, Insurance or Other Security Required, and AMC 9.48.130, Relating to Fines for Vehicular Offenses, to Make Proof of Insurance Violations Correctible and Dismissible Offenses and Increasing the Fine to \$250 if Not Corrected.

This ordinance codifies the current non-discretionary policy directive implemented by the Anchorage Police Department in 2002 concerning vehicle impoundment in conjunction with certain traffic offenses.

The intent of the attached draft ordinance is to:

- Make impoundment mandatory for the offenses listed, except the insurance offenses;
- Keep impoundment discretionary with the officer for the failure to have insurance citation (under B.3.), upon lack of other available verification;
- Remove the failure to show proof of insurance violations (under B.1 and B.2) as impound/forfeiture offenses;
- Make the offense under B.3 correctible upon proof that insurance was actually in place at the time of the citation, parallel to other correctible offenses, and like the failure to carry the driver's license offense in state law;
- Increase the fine for not producing verification of insurance (under B.1 and B.2) from \$100 to \$250 if proof of insurance is not forthcoming.

Prepared by:

Assembly Counsel

Respectfully submitted:

Paul Bauer

Assemblymember, Section 5

Municipality of Anchorage
MUNICIPAL CLERK'S OFFICE
Agenda Document Control Sheet

AM 320 -2006

(SEE REVERSE SIDE FOR FURTHER INFORMATION)

1	SUBJECT OF AGENDA DOCUMENT Impoundment and Forfeiture of Vehicle	DATE PREPARED 4/27/06
		Indicate Documents Attached <input type="checkbox"/> AO <input type="checkbox"/> AR <input checked="" type="checkbox"/> AM <input type="checkbox"/> AIM
2	DEPARTMENT NAME Assembly	DIRECTOR'S NAME Dan Sullivan, Chair
3	THE PERSON THE DOCUMENT WAS ACTUALLY PREPARED BY Julia Tucker - Assembly Counsel	HIS/HER PHONE NUMBER 343-4419
4	COORDINATED WITH AND REVIEWED BY	INITIALS
	Mayor	
	Municipal Clerk	
	Municipal Attorney	
	Employee Relations	
	Municipal Manager	
	Cultural & Recreational Services	
	Fire	
	Health & Human Services	
	Merrill Field Airport	
	Municipal Light & Power	
	Office of Management and Budget	
	Police	
	Port of Anchorage	
	Public Works	
	Solid Waste Services	
	Transit	
	Water & Wastewater Utility	
	Executive Manager	
	Community Planning & Development	
	Finance, Chief Fiscal Officer	
	Heritage Land Bank	
	Management Information Services	
	Property & Facility Management	
	Purchasing	
	Other	
5	Special Instructions/Comments	
	ADDENDUM - INTRODUCTION 9.F.1.a.	
6	ASSEMBLY HEARING DATE REQUESTED 5/2/06	PUBLIC HEARING DATE REQUESTED 5/23/06

2006 APR 27 PM 4:08
 CLERK'S OFFICE