

Submitted by: Chair of the Assembly at the
Request of the Mayor

Prepared by: Dept. of Law

For reading: July 25, 2006

CLERK'S OFFICE

APPROVED

Date: 9-12-06 ANCHORAGE, ALASKA
AO No. 2006- 115

1 AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING
2 ANCHORAGE MUNICIPAL CODE SECTION 9.28.026 REGARDING NOTICE AND
3 ADMINISTRATIVE PROCEDURES FOR CIVIL SEIZURE, IMPOUNDMENT AND/OR
4 FORFEITURE, AND RELEASE OF VEHICLES.
5

6
7 THE ANCHORAGE ASSEMBLY ORDAINS:
8

9 **Section 1.** Anchorage Municipal Code section 9.28.026 is hereby amended to read as
10 follows (*the remainder of the section is not affected, and therefore not set out*):
11

12 **9.28.026** **Impoundment and forfeiture of vehicle.**
13

14 *** **

15 C. General provisions.
16

17 1. In the case of an alleged violation of section 9.28.019, 9.28.020,
18 9.28.022, subsection 9.28.030B., or section 8.65.030, and in addition to
19 the penalties set forth in those sections, the vehicle used in the alleged
20 violation shall be impounded for thirty (30) days if the person driving,
21 operating, or in the actual physical control of the vehicle has not been
22 previously convicted and shall be forfeited to the municipality if the
23 person driving, operating, or in the actual physical control of the
24 vehicle has been previously convicted. Impoundment may be
25 accomplished through a seizure of the vehicle incident to an arrest or
26 pursuant to a court order entered in the course of civil or criminal
27 enforcement proceedings. Impoundment through a seizure of the
28 vehicle incident to an arrest is at the discretion of the arresting officer.
29

30 2. A case seeking civil impoundment or forfeiture shall [MAY] be heard
31 and decided by [EITHER] the Alaska state [district] court [OR A
32 MUNICIPAL ADMINISTRATIVE HEARING OFFICER
33 PURSUANT TO CHAPTER 3.60. REFERENCES IN THIS SECTION
34 TO "THE COURT" OR "A COURT" SHALL BE INTERPRETED TO
35 INCLUDE EITHER THE DISTRICT COURT OR ANY MUNICIPAL
36 ADMINISTRATIVE HEARING OFFICER. AN ADMINISTRATIVE
37 HEARING OFFICER UNDER THIS SECTION MAY BE A
38 REGULAR MUNICIPAL EMPLOYEE, AN INDEPENDENT
39 CONTRACTOR, OR AN EMPLOYEE OF A MUNICIPAL AGENCY
40 SUCH AS THE PARKING AUTHORITY. IN ADDITION TO CASES
41 BROUGHT UNDER THIS SECTION AN ADMINISTRATIVE
42 HEARING OFFICER MAY HEAR OTHER CODE VIOLATIONS

1 WHICH MAY BE DISPOSED OF BY ADMINISTRATIVE
2 HEARING. HEARINGS BEFORE AN ADMINISTRATIVE
3 HEARING OFFICER SHALL TAKE PLACE NO LESS THAN
4 SEVEN DAYS AND NO MORE THAN 30 DAYS AFTER A
5 REGISTERED OWNER OR LIENHOLDER REQUESTS A
6 HEARING. HEARINGS BEFORE AN ADMINISTRATIVE
7 HEARING OFFICER SHALL BE GOVERNED BY CHAPTER 3.60
8 TO THE EXTENT THAT THE PROVISIONS OF CHAPTER 3.60
9 DO NOT CONFLICT WITH THIS SECTION. IF THE PROVISIONS
10 OF THIS SECTION CONFLICT WITH THE PROVISIONS OF
11 CHAPTER 3.60, THE PROVISIONS OF THIS SECTION GOVERN].

12
13 3. Upon the request of the municipality or a claimant, a civil proceeding
14 seeking impoundment or forfeiture shall be held in abeyance until
15 conclusion of any pending criminal charges arising out of the incident
16 giving rise to the forfeiture or impoundment action under section
17 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030.

18
19 4. Upon motion by the municipality, if it appears there is reasonable cause
20 for the seizure of a vehicle or for the filing of a complaint for impound
21 or forfeiture, the court shall find:

22
23 a. Reasonable cause exists, or any such action was taken under a
24 reasonable good faith belief it was proper;

25
26 b. The claimant is not entitled to costs or damages; and

27
28 c. The municipality is not liable to suit or judgment for the
29 seizure, suit or prosecution.

30
31 d. A claimant who fails to establish the claimant's interest is
32 exempt from forfeiture pursuant to subsection C.6. shall pay
33 reasonable costs and expenses of the municipality for the
34 investigation and prosecution of the civil action, including
35 reasonable attorney fees.

36
37 [4. THE COURT SHALL AWARD THE PREVAILING PARTY
38 IN AN IMPOUNDMENT OR FORFEITURE CASE ITS
39 REASONABLE ATTORNEYS' FEES AND COSTS. COSTS UNDER
40 THIS SECTION SHALL INCLUDE BUT ARE NOT LIMITED TO
41 FILING COSTS, ADVERTISING COSTS, POLICE OFFICER TIME
42 REQUIRED FOR TESTIMONY, AND SUCH OTHER COSTS
43 INCURRED IN PROCESSING THE CASE, INCLUDING ANY
44 COSTS SPECIFIED BY THIS SECTION.]

45
46 [5. PARTIES HAVING AN INTEREST IN THE VEHICLE,
47 INCLUDING LIENHOLDERS, AS SHOWN ON THE VEHICLE
48 OWNERSHIP RECORDS OF THE STATE OF ALASKA, DIVISION

OF MOTOR VEHICLES OR AN AGENCY WITH SIMILAR RESPONSIBILITIES IN ANOTHER STATE SHALL BE SERVED WITH NOTICE OF [THE] CIVIL ACTION BY CERTIFIED MAIL, WITH RETURN RECEIPT REQUESTED AND RESTRICTED DELIVERY, SENT TO THEIR ADDRESS OF RECORD AS SHOWN IN THE VEHICLE OWNERSHIP RECORDS OF THE STATE OF ALASKA OR AN AGENCY WITH SIMILAR RESPONSIBILITY IN ANOTHER STATE OR RESIDENCE ADDRESS AS INDICATED IN THE POLICE REPORT. IN A FORFEITURE ACTION, IF THE OWNERS OR LIENHOLDERS DO NOT RECEIVE SERVICE THROUGH THE MAIL, THE OWNERS OR LIENHOLDERS MAY BE SERVED AT THE MUNICIPALITY'S OPTION BY PERSONAL SERVICE OR BY PUBLICATION. IF AN OWNER OR LIENHOLDER IS SERVED PERSONALLY, SERVICE SHALL OCCUR AS PROVIDED FOR IN ALASKA RULE OF CIVIL PROCEDURE 4(D)(1)--(12). IF AN OWNER OR LIENHOLDER IS SERVED BY PUBLICATION, A NOTICE OF FORFEITURE ACTION ACCURATELY DESCRIBING THE VEHICLE, THE DATE OF IMPOUNDMENT, THE PLACE OF IMPOUNDMENT, AND DIRECTIONS AS TO WHO TO CONTACT FOR MORE INFORMATION SHALL BE PUBLISHED AT LEAST ONCE PER WEEK FOR TWO CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION AND SUCH OWNERS AND LIENHOLDERS SHALL BE DEEMED SERVED. FOR THE PURPOSES OF THIS SECTION, A NEWSPAPER OF GENERAL CIRCULATION IS ONE WHICH IS RECOGNIZED BY THE STATE AS QUALIFIED TO PUBLISH DEFAULT SALE NOTICES. ANY PARTY FAILING TO APPEAR IN AN IMPOUNDMENT ACTION WITHIN 20 DAYS OF SERVICE OF NOTICE OR 30 DAYS OF THE SEIZURE OF THE VEHICLE, WHICHEVER COMES FIRST, WAIVES THE RIGHT TO OBJECT TO IMPOUND. ANY PARTY FAILING TO APPEAR IN THE CIVIL ACTION WITHIN 20 DAYS OF SERVICE OF NOTICE OR COMPLETION OF PUBLICATION WAIVES THE RIGHT TO OBJECT TO FORFEITURE. ANY PARTY WHO REQUESTS A HEARING IN A CIVIL ACTION SHALL BE DEEMED SERVED. ANY PARTY WHO SECURES THE RELEASE OF A VEHICLE PENDING HEARING SHALL ACCEPT SERVICE OF NOTICE OF THE CIVIL ACTION AS A CONDITION OF RELEASE. FOR ACTIONS FILED IN DISTRICT COURT, DISTRICT COURT CIVIL RULES SHALL APPLY.]

5[6]. The civil impoundment or forfeiture of a seized vehicle under this section shall be through a civil action filed in Alaska state court. A civil action for impoundment or forfeiture shall be filed within six (6) months from the final disposition of the underlying criminal action against the driver of the seized vehicle.

[6. ANY REQUESTS FOR RELEASE OF A VEHICLE WHICH

1 IS THE SUBJECT OF A CIVIL IMPOUNDMENT OR FORFEITURE
2 ACTION FILED UNDER THIS SECTION WHICH ARE BROUGHT
3 BY A PERSON OR ENTITY WHO HAS NOT BEEN CHARGED
4 WITH A VIOLATION OF SECTION 9.28.019, 9.28.020, 9.28.022,
5 9.28.030, OR 8.65.030 MUST BE BROUGHT IN THE FORUM OF
6 THE CIVIL ACTION].

7
8 6[7]. A claimant of [AT A HEARING BEFORE THE COURT IN A CIVIL
9 ACTION, A PERSON WHO CLAIMS] an ownership or security
10 interest in the motor vehicle may avoid impound or avoid forfeiture of
11 the claimant's [THAT PERSON'S] interest in the civil action if the
12 claimant [CAN] establishes, by a preponderance of the evidence
13 [THAT]:

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

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

23
24 c. The claimant did not know and could not reasonably have
25 known the person would operate the vehicle in violation of
26 section 9.28.019, 9.28.020, 9.28.022, 9.28.030 or 8.65.030 [IF
27 APPLICABLE, BEFORE PERMITTING THE ALLEGED
28 OPERATOR TO GAIN CUSTODY OR CONTROL OF THE
29 MOTOR VEHICLE, THE CLAIMANT DID NOT KNOW OR
30 HAVE REASONABLE CAUSE TO BELIEVE THAT IF THE
31 VEHICLE WERE OPERATED BY THE ALLEGED
32 OPERATOR IT WOULD BE OPERATED IN VIOLATION
33 OF THIS CODE]; and

34
35 d. In cases where the municipality filed a civil action to forfeit a
36 seized vehicle, the claimant took reasonable steps to prevent,
37 as the phrase is defined in subsection F. below, the person
38 charged with violating section 9.28.019, 9.28.020, 9.28.022,
39 9.28.030, or 8.65.030 from violating section 9.28.019,
40 9.28.020, 9.28.022, 9.28.030, or 8.65.030.

41
42 e [D]. A claimant that is a regulated lienholder meets its burden of
43 proof under this subsection by filing with the court a copy of
44 the vehicle's certificate of title or other security instrument
45 reflecting the lien, together with an affidavit stating the amount
46 of the lien and stating that the claimant is a regulated lienholder
47 and was not in possession of the vehicle at the time of the act
48 which resulted in the seizure of the vehicle. The presumptions

provided in this subsection shall not apply to regulated lienholders.

f. For purposes of this section, when a person other than the claimant was in possession of the vehicle and was driving with a suspended, revoked, or cancelled license or in violation of a limited license or without a valid driver's license, it is presumed that the claimant did have reasonable cause to believe that the vehicle would be used in violation of this Code.

g. Also for purposes of this section, when the claimant and driver are not the same person and the claimant and driver have a familial relationship, such as husband and wife, father and daughter, mother and stepson, etc., or the claimant and driver live at the same address, it shall be presumed [THAT] the claimant is responsible and [THAT] the vehicle was operated by the driver, in violation of section 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030, with the knowledge and consent of the claimant.

h. If a claimant was in the vehicle at the same time the vehicle was being operated by the driver in violation of section 9.28.020 or 9.28.022, it shall be presumed the claimant knew and consented to operation of the vehicle in violation of section 9.28.020 or 9.28.022.

i. A claimant is not required by this subsection to take steps the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the impound or forfeiture) to physical danger.

j. For purposes of this section, corporations and other entities are deemed to have knowledge of the acts, omissions, and driving record of directors, officers, and other managers, regardless of whether the directors, officers, or other managers are acting within the scope of employment.

7[8]. Within two (2) days of seizure, parties with an interest in the vehicle, including lienholders, as shown on the vehicle ownership records of the State of Alaska, Division of Motor Vehicles, or an agency with similar responsibilities in another state, shall be served with notice of seizure by certified mail sent to the address of record as shown in the vehicle ownership records of the State of Alaska, or an agency with similar responsibility in another state, or residence address as indicated in the police report.

a. For purposes of computing the two (2) day period, the day the vehicle was seized is not included. For purposes of computing

the two (2) day period, Saturdays, Sundays, and Municipal holidays, are not included. This period may be reasonably extended for those instances when vehicle ownership records are not accessible from the State of Alaska, Division of Motor Vehicles, or an agency with similar responsibilities in another state.

b. The notice of seizure shall notify parties of their right to a post-seizure probable cause hearing if such hearing is requested, in writing, within ten (10) days after the date the notice of the seizure is mailed, as evidenced by the postmark.

c. If notice is not provided as required by this subsection, the municipality shall waive the administrative fee.

d. If a registered owner was personally served at the time of impoundment with a notice containing all the information required by this section, no further notice is required to be sent to that registered owner.

[8. UPON RECEIVING NOTICE FROM THE COURT OF THE TIME AND PLACE FOR A HEARING IN A CIVIL ACTION, THE MUNICIPALITY SHALL, UNLESS SUCH NOTICE HAS BEEN PROVIDED BY THE COURT, PROVIDE TO EVERY PERSON WHO HAS AN ASCERTAINABLE OWNERSHIP OR SECURITY INTEREST IN THE MOTOR VEHICLE AS INDICATED BY THE STATE OF ALASKA, DIVISION OF MOTOR VEHICLES OR ANY AGENCY WITH SIMILAR RESPONSIBILITIES IN ANOTHER STATE WRITTEN NOTICE THAT INCLUDES:

- A. A DESCRIPTION OF THE MOTOR VEHICLE;
- B. THE TIME AND PLACE OF THE FORFEITURE OR IMPOUND HEARING;
- C. THE LEGAL AUTHORITY UNDER WHICH THE MOTOR VEHICLE MAY BE IMPOUNDED OR FORFEITED;
- D. NOTICE OF THE RIGHT TO INTERVENE TO PROTECT THE INTEREST IN THE MOTOR VEHICLE.]

8[9]. The [PURSUANT TO ALASKA RULE OF COURT 41(A)(1), THE] municipality may enter into an agreement with the registered owner or lienholder of the vehicle to resolve a civil impound or forfeiture action arising under section 9.28.019, 9.28.020, 9.28.022, 9.28.030 or 8.65.030 and permit release of the vehicle. Any such agreement shall include:

- a. Acceptance by the owner or lienholder of responsibility for meeting the requirements of subsection C.9. [10 OF THIS

SECTION];

- b. Agreement [THAT] the owner or lienholder shall [WILL] take reasonable steps to prevent the individual arrested for or charged with driving under the influence or with refusal to submit to chemical tests from operating the vehicle until properly licensed; and
- c. Acknowledgment by the owner or lienholder that failure to fulfill his or her obligations under the agreement may result in forfeiture of the vehicle at the option of the municipality. This requirement shall not apply to a regulated lienholder required by other law or by the terms of the agreement creating the lien to permit the individual to recover the vehicle upon payment of the lien or cure of any default.

9[10]. No vehicle shall be released [UNLESS THE RELEASE IS PURSUANT TO AN AGREEMENT UNDER SECTION 9.28.026.C.9, THE PERSON SEEKING TO REDEEM THE VEHICLE MUST OBTAIN AN ORDER AUTHORIZING RELEASE OF THE VEHICLE. A RELEASE SHALL NOT BE GRANTED] unless the applicant [CAN]:

- a. Provides [UNLESS, WAIVED BY THE MUNICIPALITY IF THE VEHICLE IS INOPERABLE, PROVIDE] proof of insurance in a form acceptable to the municipality [OR AN AFFIDAVIT OF INSURANCE];
- b. Provides proof of ownership or, if a lienholder, a legal right to repossess the vehicle; and
- c. Pays or provides 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 to offset the municipality's processing costs for seizures of vehicles based on an alleged violation of section 9.28.019, 9.28.020, 9.28.022 or 8.65.030.
 - i. The administrative charge may be waived in exceptional cases or if it is in the best interests of the municipality. The administrative charge shall not be imposed if notice is not provided as required under subsection C.7. or the administrative hearing officer finds no probable cause under subsection C.13.
- d. An administrative charge of \$200.00 shall be imposed for seizures of vehicles based on an alleged violation of section

9.28.030.

i. The administrative charge may be waived in exceptional cases or if it is in the best interests of the municipality. The administrative charge shall not be imposed if notice is not provided as required under subsection C.7. or the administrative hearing officer finds no probable cause under subsection C.13.

e. Notwithstanding the finding of the administrative hearing officer, i[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 (5) days after the issuance of the court's decision making such a finding.

f. 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 (5) 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.

10[11]. An acquittal or a conviction of a lesser offense in a criminal proceeding for a violation of chapter 9.28 provides a defense in a civil proceeding seeking impoundment or forfeiture of the vehicle if that civil proceeding is based on the same conduct that forms the basis for the criminal charge.

[12. THE PROVISIONS OF THIS SECTION SHALL BE INTERPRETED INDEPENDENTLY OF STATE LAWS REGARDING IMPOUNDMENT OR FORFEITURE OF MOTOR VEHICLES.]

11[13]. Temporary r[R]elease of vehicle pursuant to vehicle return bond [PENDING HEARING].

a. A registered owner or lienholder may obtain temporary release of a vehicle seized by the municipality pursuant to this subsection [CLAIMANT WHO IS NOT CHARGED WITH A VIOLATION OF SECTION 9.28.019, 9.28.020, 9.28.022, 9.28.030, OR 8.65.030 MAY PETITION FOR SETTING OR REVISION OF BAIL RELEASE BEFORE A CIVIL ACTION IS FILED. SUCH PETITION SHALL BE MADE TO A COURT IN THE MUNICIPALITY].

b. [A VEHICLE RETURN BOND SHALL BE SET FOR EACH

VEHICLE ALLEGED IN THE COMPLAINT TO HAVE BEEN USED IN AN ALLEGED VIOLATION OF SECTION 9.28.019, 9.28.020, 9.28.022, 9.28.030, OR 8.65.030.] The purpose of setting a vehicle return bond on the vehicle is to secure the presence of the vehicle and to provide security to be forfeited along with the proceeds of a sale, transfer, or encumbrance if the vehicle is sold, transferred, or encumbered after the vehicle has been released pending the final disposition in the criminal action against the driver of the seized vehicle or the final disposition in the civil action against claimants of the seized vehicle [HEARING]. If the vehicle's release has been obtained through the posting of a vehicle return bond and the vehicle is not returned pursuant to the court's order, the municipality may, in addition to obtaining the forfeited bond funds, seize the vehicle to implement the impoundment or forfeiture ordered by the court. A person who secures the release of a vehicle pursuant to a vehicle return bond must return the vehicle upon order of the court. 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. A vehicle return bond shall [MAY] be posted with the municipality and in cash only. A vehicle return bond shall be set at a minimum of:

- i. Two hundred fifty dollars (\$250.00) if the person charged with a violation of section 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030 has not been previously convicted;
- ii. Five hundred dollars (\$500.00) if the person charged with a violation of section 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030 has been previously convicted and the vehicle is twenty (20) years old or older;
- iii. One thousand dollars (\$1,000.00) if the person charged with a violation of section 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030 has been previously convicted and the vehicle is fifteen (15) years old or older but less than twenty (20) years old;
- iv. One thousand five hundred dollars (\$1,500.00) if the person charged with a violation of section 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030 has been previously convicted and the vehicle is ten (10) years old or older but less than fifteen (15) years old;

v. Two thousand dollars (\$2,000.00) if the person charged with a violation of section 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030 has been previously convicted and the vehicle is five(5) years old or older but less than ten (10) years old; and

vi. Two thousand five hundred dollars (\$2,500.00) if the person charged with a violation of section 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030 has been previously convicted and the vehicle is less than five (5) years old.

c. A vehicle return bond may be set above the minimum if the vehicle appears to have unusually high value for its age. A vehicle may not be released pursuant to a vehicle return bond unless release is in compliance with subsection C.9. [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 \$390.00 TO OFFSET THE MUNICIPALITY'S PROCESSING COSTS. THE INSURANCE REQUIREMENT MAY BE WAIVED BY THE MUNICIPALITY IF THE VEHICLE IS INOPERABLE].

d. If the person [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 by the court [IN THE CASE], upon motion of the municipality, the court shall [MAY] order all [OR ANY PART] of the vehicle return bond forfeited to the municipality and shall [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. For purposes of this subsection, it shall be presumed the amount of proceeds of any sale, transfer, or encumbrance is the assessed or appraised value of the seized vehicle as defined in subsection F. below.

e. Personal property in a vehicle that is subject to a vehicle return bond under [SUBSECTION C.13 OF] this subsection 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.

f. The court shall order the forfeiture of a vehicle return bond if a person charged under section 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030 obtains temporary release of a seized vehicle and does not appear before the court as ordered.

[14. AS USED IN THIS SECTION, THE TERM "REGISTERED OWNER" REFERS TO THE OWNER OF THE VEHICLE AT THE TIME OF OFFENSE AS SHOWN IN THE VEHICLE OWNERSHIP RECORDS OF THE STATE OF ALASKA, DIVISION OF MOTOR VEHICLES OR ANOTHER AGENCY WITH SIMILAR RESPONSIBILITIES IN ANOTHER STATE, BUT MAY INCLUDE SUBSEQUENT GOOD FAITH PURCHASERS.]

12[15]. For purposes of this section, time shall be calculated as set forth in Alaska Rule of Civil Procedure 6, unless otherwise stated.

[16. ASSESSED OR APPRAISED VALUE OF A MOTOR VEHICLE SHALL BE BASED UPON THE AUTOMOBILE DEALERS ASSOCIATION BOOK (BLUE BOOK) FOR THE SAME OR SIMILAR MAKE AND MODEL AND ACCESSORIZED MOTOR VEHICLE. SHOULD THERE BE NO BLUE BOOK VALUE FOR THE MOTOR VEHICLE, THE VALUE SHALL BE \$500.00.]

13[17]. When a timely request for a post-seizure probable cause hearing is made, a hearing shall be held before an administrative hearing officer. The hearing shall be held within three (3) days after the request is received, excluding weekends and Municipal holidays. The hearing may be postponed upon agreement of the parties.

a. The purpose of the hearing is to determine whether there was probable cause to seize the vehicle. The administrative hearing officer shall not make a final adjudication of impoundment or forfeiture of the vehicle. Findings by the administrative hearing officer shall not collaterally estop the issue of probable cause or any other factual or legal issue from being decided by the court.

b. The post-seizure probable cause hearing shall be by telephone unless otherwise requested by the administrative hearing officer

c. If the law enforcement officer provides a signed police report or affidavit with the name and badge number or other identifying mark of the law enforcement officer to the administrative hearing officer, the law enforcement officer need not be present at the hearing unless requested by the person requesting the hearing or the administrative hearing officer.

ii. If the law enforcement officer is unavailable because of vacation, sickness, or other similar reason, the hearing may be postponed a reasonable time period in order to accommodate the law enforcement officer's unavailability.

e. If the administrative hearing officer finds there was no probable cause to seize the vehicle:

ii. The registered owner or lienholder may make a claim to the municipality for towing and storage.

[17. FOR PURPOSES OF THIS SECTION AND ONLY FOR PURPOSES OF PROCEEDINGS BEFORE AN ADMINISTRATIVE HEARING OFFICER UNDER THIS SECTION, THE POLICE REPORT, WHICH MAY INCLUDE THE NARRATIVE; ACCOMPANYING DOCUMENTS; COMPUTER PRINT-OUTS FROM DATA BASES OPERATED BY POLICE AGENCIES AND/OR GOVERNMENT AGENCIES REGULATING MOTOR VEHICLES SHOWING THE OWNERSHIP OF THE VEHICLE, THE DRIVER'S LICENSE STATUS OF THE DRIVER, AND THE RECORD OF CRIMINAL CONVICTIONS OF THE DRIVER; AND/OR TAPE RECORDINGS, IS ADMISSIBLE EVIDENCE SO LONG AS IT IS SIGNED WITH EITHER THE NAME, INITIALS, BADGE NUMBER, OR OTHER IDENTIFYING MARK OF AN EMPLOYEE OF THE MUNICIPALITY IN A STATEMENT MADE UNDER PENALTY OF PERJURY.]

[18. FOR PURPOSES OF THIS SECTION, CONVICTIONS FOR VIOLATION OF SECTION 9.28.020 AND 9.28.022 ARISING OUT OF A SINGLE TRANSACTION AND A SINGLE ARREST ARE CONSIDERED ONE PREVIOUS CONVICTION. "PREVIOUSLY CONVICTED" MEANS:

- A. IF CHARGED WITH VIOLATING SECTION 9.28.019, HAVING BEEN CONVICTED IN THIS OR ANOTHER JURISDICTION OF OPERATING A MOTOR VEHICLE WHILE THEIR LICENSE IS CANCELED, SUSPENDED OR REVOKED, OR IN VIOLATION OF A LIMITATION, UNDER SECTION 9.28.019 OR ANOTHER LAW OR ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS WITHIN TEN YEARS PRECEDING THE DATE OF THE PRESENT OFFENSE.
- B. IF CHARGED WITH VIOLATING EITHER SECTION 9.28.020 OR 9.28.022, HAVING BEEN CONVICTED IN THIS OR ANOTHER JURISDICTION OF OPERATING A MOTOR VEHICLE, AIRCRAFT, OR WATERCRAFT WHILE UNDER THE INFLUENCE UNDER SECTION 9.28.020 OR ANOTHER LAW OR ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, OR OF REFUSAL TO SUBMIT TO A CHEMICAL TEST UNDER SECTION 9.28.022 OR 28.35.032 OR ANOTHER LAW OR ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS.
- C. IF CHARGED WITH VIOLATING SECTION 9.28.030, HAVING BEEN CONVICTED IN THIS OR ANOTHER JURISDICTION OF OPERATING A MOTOR VEHICLE WITHOUT THE REQUIRED SECURITY IN EFFECT AT THE TIME OF OPERATION UNDER SECTION 9.28.030 OR ANOTHER LAW OR ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS WITHIN TEN YEARS PRECEDING THE DATE OF THE PRESENT OFFENSE.
- D. IF CHARGED WITH VIOLATING SECTION 8.65.030C. OR ANOTHER LAW OR ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS WITHIN TEN YEARS PRECEDING THE DATE OF THE PRESENT OFFENSE.]

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

15[20]. For purposes of this section, the parties may agree to extend, reduce or otherwise alter the time limits set by this Code.

[21. FOR PURPOSES OF THIS SECTION, THE TERMS "VEHICLE," "DRIVER," "PERSON" AND "PHYSICAL

CONTROL" SHALL HAVE THOSE MEANINGS AS SET FORTH
IN SECTION 9.04.290.]

16[22]. The owner of a vehicle or the designated agent of the owner of a vehicle that is the subject of an impoundment or forfeiture action may relinquish to the municipality any ownership interest possessed by the owner as part of an agreement to resolve the action.

[23. THE TERM "REGULATED LIENHOLDER" AS USED IN THIS SECTION SHALL MEAN AN ENTITY WHOSE LIEN ON THE VEHICLE IS A RESULT OF LENDING ACTIVITIES THAT ARE SUBJECT TO REGULATION BY THE NATIONAL CREDIT UNION ADMINISTRATION, THE COMPTROLLER OF THE CURRENCY OR OTHER FEDERAL BANKING REGULATORS, THE FEDERAL TRADE COMMISSION, OR THE STATE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT.]

17[24]. Nothing in this section shall be construed to place upon a regulated lienholder a duty to inquire into the driving record of any loan applicant or any member of the loan applicant's family or household, and failure to do so shall not be usable as evidence against the regulated lienholder in any forfeiture proceeding or other civil action. [KNOWLEDGE FROM OTHER SOURCES OF THE LOAN APPLICANT'S DRIVING RECORD IS USABLE ONLY TO THE EXTENT THAT IT IS RELEVANT UNDER SUBSECTION C.7. OF THIS SECTION.]

[25. FOR PURPOSES OF THIS SECTION, A SEIZURE IS LEGALLY UNJUSTIFIED ONLY IF THERE WAS:

- A. NO REASONABLE SUSPICION FOR THE STOP OF THE VEHICLE LEADING TO AN ARREST FOR SOLICITING, DRIVING WITHOUT A VALID LICENSE, DRIVING UNDER THE INFLUENCE, OR OPERATING WITHOUT THE REQUIRED SECURITY BASED ON THE INDIVIDUAL ALLEGEDLY OPERATING, DRIVING, OR BEING IN ACTUAL PHYSICAL CONTROL OF THE VEHICLE; OR
- B. NO PROBABLE CAUSE FOR THE ARREST OF AN INDIVIDUAL FOR SOLICITING, DRIVING WITHOUT A VALID LICENSE, DRIVING UNDER THE INFLUENCE, OR OPERATING WITHOUT THE REQUIRED SECURITY BASED ON THE INDIVIDUAL ALLEGEDLY OPERATING, DRIVING, OR BEING IN ACTUAL PHYSICAL CONTROL OF THE VEHICLE.]

18. Upon motion of the municipality, the court shall void the transfer of title or any interest in a seized vehicle occurring subsequent to the seizure of the vehicle pursuant to this section.

a. If the vehicle is temporarily released pursuant to a vehicle return bond and the transferee is able to establish by a preponderance of the evidence the sale, transfer, or encumbrance was in good faith, the court shall order the transferor to forfeit the proceeds from the sale, transfer, or encumbrance to the municipality.

b. For purposes of this subsection, it shall be presumed the amount of proceeds of any sale, transfer, or encumbrance is the assessed value of the seized vehicle.

D. Impoundment.

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

2. A vehicle may be seized for impound under the circumstances set forth in subsection E.3.[OF THIS SECTION.]

3. A vehicle seized incident to an arrest may be held by the municipality for up to two (2) days before the owner or lienholder may obtain release of the seized vehicle. [IF THE SEIZURE OCCURS INCIDENT TO AN ARREST OR OTHERWISE PRIOR TO A CONVICTION OR COURT ORDERED IMPOUNDMENT THE VEHICLE MAY NOT BE HELD MORE THAN TWO DAYS WITHOUT A COURT ORDER OBTAINED TO CONTINUE ITS DETENTION.]

a. For purposes of computing the two (2) day period, the day the vehicle was seized is not [TO BE] included. For purposes of computing the two-day period, Saturdays, Sundays and municipal [legal] holidays are not [TO BE] included.

4. A vehicle[, WHICH IS] ordered impounded under this section [,] shall be held for a period of thirty (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, 9.28.030, or 8.65.030 or upon decision of a court in a separate civil proceeding.

5. Vehicles ordered impounded under this section which are not claimed at the end of the 30-day, court-ordered period of impoundment may be disposed of pursuant to the provisions of AS 28.10.502.

a. If the contents of the vehicle have not been recovered before such disposal, the contents may be disposed of with the vehicle.

b. Personal property in a vehicle that is subject to a vehicle return bond under subsection C.11. above, [9.28.026A.13] 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.

c. The [SUCH] fee for monitoring the recovery of personal property shall be set by contract between the towing and storage contractor and the municipality if it is not established by ordinance.

d. The [SUCH] fee for monitoring the recovery of personal property 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.

6. Civil release of the vehicle does not affect or change the criminal proceedings incurred as a result of the violation.

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, 9.28.030, 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 section 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030 may be forfeited to the municipality either upon conviction of the defendant of a violation of section 9.28.019, 9.28.020, 9.28.022, 9.28.030, 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, 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 section 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030.
- d. A vehicle seized incident to an arrest may be held by the municipality for up to two days before the owner or lienholder can obtain release of the seized vehicle. [A MOTOR VEHICLE IMPOUNDED UNDER THIS SUBSECTION MAY NOT BE HELD FOR MORE THAN TWO DAYS WITHOUT A COURT ORDER OBTAINED TO CONTINUE ITS DETENTION.]
- e. For purposes of computing the two (2) day period, the day the vehicle was seized is not [TO BE] included. For purposes of computing the two (2) day period, Saturdays, Sundays, and municipal [LEGAL] holidays are not [TO BE] included.

4[5]. A motor vehicle seized for the purpose of forfeiture or impoundment shall be held in the custody of the police department or a private corporation authorized by the chief of police to retain custody of the motor vehicle [AS DESIGNATED IN THE FIRST PARAGRAPH OF THIS SECTION AND SUBSECTION C.3 OF THIS SECTION], subject only to the orders and decrees of the court having jurisdiction over any forfeiture or impoundment proceedings. If a motor vehicle is seized under this section, section 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030, the chief of police, or [HIS] authorized designee, may:

- a. Remove the motor vehicle and any contents of the motor vehicle to a place designated by the court; or
- b. Take custody of the motor vehicle and any contents of the motor vehicle and remove it to an appropriate location for disposition. No private corporation may make or perform a

1 contract to tow, store, or retain custody of motor vehicles
2 seized or impounded under this section, section 9.28.019,
3 9.28.020, 9.28.022, 9.28.030, or 8.65.030 if any of the owners
4 of that private corporation have been convicted of a felony or
5 any crime involving larceny, theft, or receiving and concealing
6 stolen property within ten years before the date of execution of
7 the contract or during the term of the contract. No private
8 corporation may make or perform a contract to tow, store, or
9 retain custody of motor vehicles seized or impounded under
10 this section, section 9.28.019, 9.28.020, 9.28.022, 9.28.030, or
11 8.65.030 if any of the employees of that private corporation
12 have been convicted of a felony or any crime involving larceny,
13 theft, or receiving and concealing stolen property within five
14 years before the date of execution of the contract or during the
15 term of the contract.
16

17 [4. A COURT MAY ORDER IMPOUNDMENT OF A MOTOR
18 VEHICLE SUBJECT TO FORFEITURE IN A CIVIL ACTION
19 FILED UNDER SUBSECTION C OF THIS SECTION FOR A
20 MINIMUM OF 30 CONSECUTIVE DAYS.]
21

22 5[6]. Following a forfeiture order under this section, section 9.28.019,
23 9.28.020, or 9.28.022, 9.28.030, or 8.65.030, the chief of police, or
24 authorized [HIS OR HER] designee, shall make an inventory of the
25 contents of any motor vehicle seized. Personal property in a vehicle
26 that is subject to a vehicle return bond under subsection C.11.[13 OF
27 THIS SECTION] and has not been released pursuant to that vehicle
28 return bond can be recovered from a vehicle only by the owner of the
29 vehicle and only upon payment of a fee charged for monitoring the
30 recovery of such personal property. Such fee shall be set by contract
31 between the towing and storage contractor and the municipality if it is
32 not established by ordinance. Such fee shall be recoverable by the
33 owner of the vehicle if a court makes a specific finding that the seizure
34 of the vehicle was legally unjustified [FOLLOWING A CONTESTED
35 HEARING] or pursuant to a stipulation between the parties.
36

37 6[8]. A claimant may petition the court for sale of a motor vehicle before
38 final disposition of court proceedings. The court shall grant a petition
39 for sale upon a finding that the sale is in the best interest of the
40 municipality. Proceeds from the sale plus interest to the date of final
41 disposition of the court proceedings become the subject of the
42 forfeiture action.
43

44 7[9]. Property forfeited under this section, section 9.28.020, 9.28.022,
45 9.28.030, or 8.65.030 shall be disposed of by the chief of police, or
46 authorized [HIS OR HER] designee, in accordance with this
47 subsection. Property forfeited under this section, section 9.28.019,
48 9.29.020, 9.28.022, 9.28.030, or 8.65.030 includes both the vehicle that

1 is the subject of the forfeiture action and the contents of the vehicle if
2 those contents have not been recovered before the date of the disposal.
3 The chief of police, or authorized [HIS OR HER] designee, may:
4

5 a. Sell the property at an auction conducted by an auctioneer not
6 employed by the impound contractor and use the proceeds for
7 payment of all proper expenses of seizure, custody, the costs of
8 the auction, court costs, and municipal attorney fees, provided
9 that if such sale is arranged for by the impound contractor, the
10 municipality shall receive at least thirty percent (30%)
11 [PERCENT] of the proceeds of any sale of forfeited vehicles
12 following deduction for the costs charged by the auctioneer for
13 the auction of those vehicles regardless of whether the costs of
14 impound and storage exceed the value of the forfeited vehicles
15 sold;
16

17 b. Take custody of the property and use it in the enforcement of
18 the municipal and state criminal codes; or
19

20 c. Destroy the property.
21

22 d. Property forfeited and sold at auction pursuant to this section,
23 section 9.28.019, 9.28.020, 9.28.022, 9.28.030, and 8.65.030
24 shall be sold by an auctioneer approved before the auction by
25 the chief of police, or authorized [HIS OR HER] designee.
26

27 i. Before the auction, the chief of police, or authorized
28 [HIS OR HER] designee, must approve in advance the
29 auctioneer's costs or the method for determining the
30 auctioneer's costs.
31

32 ii. The impound contractor shall provide to the chief of
33 police, or authorized [HIS OR HER] designee, a copy
34 of the auctioneer's report of the auction notarized by the
35 auctioneer.
36

37 iii. The municipal auditor shall certify the proper disposal
38 of property forfeited under this section, section
39 9.28.019, 9.28.020, 9.28.022, 9.28.030, and 8.65.030.
40

41 iv. The chief of police may adopt rules and regulations to
42 implement this section.
43

44 [7. UPON SERVICE OR COMPLETION OF PUBLICATION OF
45 NOTICE OF COMMENCEMENT OF A FORFEITURE ACTION
46 UNDER SUBSECTION A.5 OF THIS SECTION, A PERSON
47 CLAIMING INTEREST IN THE PROPERTY SHALL FILE, WITHIN
48 30 DAYS AFTER SERVICE OR COMPLETION OF PUBLICATION,

A NOTICE OF CLAIM SETTING OUT THE NATURE OF THE INTEREST, THE DATE IT WAS ACQUIREDED, THE CONSIDERATION PAID, AND AN ANSWER TO THE MUNICIPALITY'S ALLEGATIONS. IF A CLAIM AND ANSWER IS NOT FILED [WITHIN THE TIME SPECIFIED, THE MOTOR VEHICLE DESCRIBED IN THE MUNICIPALITY'S ALLEGATION MUST BE ORDERED FORFEITED TO THE MUNICIPALITY WITHOUT FURTHER PROCEEDINGS OR SHOWINGS. FOR A REGULATED LIENHOLDER, THE REQUIREMENT OF A NOTICE OF CLAIM AND ANSWER IS MET BY THE FILING OF THE INFORMATION REQUIRED BY SUBSECTION C.7.D OF THIS SECTION, AND BY ADDING TO THE AFFIDAVIT REQUIRED BY THAT SUBSECTION A STATEMENT OF THE ORIGINAL AMOUNT OF THE LOAN GIVING RISE TO THE LIEN AND THE CURRENT BALANCE DUE ON THAT LOAN.]

8[10]. Upon a showing [THAT] a claimant is entitled to remittance in accordance with this section, the court shall order that:

- a. If the claimant is entitled to the motor vehicle, it shall be delivered to the claimant immediately subject to [COSTS AS DESCRIBED IN] subsection 9.28.026.C.9.[10]; or
- b. If the claimant is entitled to remittance of some value less than the total value of the motor vehicle, the claimant is entitled at the claimant's choice to receive either the value of the claimant's interest after the sale of the vehicle at an auction following deduction of the costs of the auction or, upon request and payment of the difference in value by the claimant, the motor vehicle itself.
- c. When a vehicle is subject to forfeiture under this section, and when the vehicle is sold and the lienholder interest exceeds the sale price, the owner may be held responsible for the difference and the municipality's costs.

9[11]. The storage and impound costs as well as any court costs imposed[, IF ANY,] for vehicles seized [IMPOUNDED] under [SUBSECTION C.3 OF] this section shall be borne by the person redeeming such vehicle as owner or in behalf of the owner or as having an interest in the vehicle. The amount of such costs shall be determined as provided in subsection[S C.4 AND] C.9[10 OF THIS SECTION].

10[12]. In a contested forfeiture proceeding concerning a vehicle titled in the names of more than one owner on the certificate of title, the court shall follow this subsection.

- a. If one owner does not avoid forfeiture, the court may order the

forfeiture of the entire interest of all the owners in a vehicle which is titled in the names of more than one owner in the disjunctive. Title in the disjunctive is significant by the use of the word "or" between the names of the owners listed on the certificate of title.

b. If such owner does not avoid forfeiture, the court shall order the forfeiture of the interest of any owner in a vehicle which is titled in the names of more than one owner in the conjunctive. Title in the conjunctive is signified by use of the word "and" between the names of the owners listed on the certificate of title. Owners of a vehicle titled in the names of more than one owner in the conjunctive are presumed to own the vehicle in equal shares.

c. In circumstances described in this subsection, the court shall order that the vehicle be sold at public auction and further order that the proceeds from the sale of the vehicle be held by the treasury division of the municipality's finance department.

d. After deduction of the reasonable costs of the auction, an amount of the proceeds of the auction for the sale of that vehicle which is equal to the interests of the owners whose interests have not been forfeited shall be returned to those owners if those owners apply to the treasury division of the municipality's finance department within sixty (60) days of the auction.

i. If the owners whose interests have not been forfeited do not apply within that period, those funds become the property of the municipality subject to the rights of any other claimant to those funds.

11[13]. Property subject to the interest of a lienholder whose interest has not been forfeited may not be disposed of as provided in this section without the consent of the lienholder. A regulated lienholder's interest in a vehicle shall not be subject to forfeiture in any case where:

a. The individual who allegedly used the vehicle in violation of section 9.28.019, 9.28.020, 9.28.022, 9.28.030, or 8.65.030 is not the person whose dealings with the lienholder gave rise to the lien; or

b. The vehicle [WHICH]the individual was driving, operating, or was in actual physical control of at the time of the alleged violation was not the vehicle involved in the event giving rise to the conviction [DESCRIBED IN SUBSECTION D.1.B OF THIS SECTION].

F. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Administrative hearing officer means a person designated to conduct post-seizure probable cause hearings.

Assessed or appraised value of a motor vehicle means the value set out in the National Automobile Dealers Association Book (NADA) for the same or similar make and model and accessorized motor vehicle. In the event there be no NADA value for a motor vehicle, the value shall be set at a minimum of \$500.00.

Driver shall have the same meaning as set forth in section 9.04.010.

Legally unjustified means there was:

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

Person shall have the same meaning as set forth in section 9.04.010.

Previously convicted means:

1. If charged with violating section 9.28.019, having been convicted in this or another jurisdiction of operating a motor vehicle while their license is canceled, suspended or revoked, or in violation of a limitation, under section 9.28.019 or another law or ordinance with substantially similar elements within ten years preceding the date of the present offense.
2. If charged with violating either section 9.28.020 or 9.28.022, having been convicted in this or another jurisdiction of operating a motor vehicle, aircraft, or watercraft while under the influence under section 9.28.020 or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under section 9.28.022 or 28.35.032 or another law or ordinance with substantially similar elements.

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

4. If charged with violating section 8.65.030C. or another law or ordinance with substantially similar elements within ten years preceding the date of the present offense.

5. Convictions for violation of section 9.28.020 and 9.28.022 arising out of a single transaction and a single arrest are considered one previous conviction.

Reasonable steps to prevent means the claimant has the burden of showing, by a preponderance of the evidence, that:

1. The claimant secured the keys to the vehicle or the vehicle itself in a way that should have prevented the person charged with violating this chapter from obtaining access to the vehicle; or

2. Informed the police, before seizure of the vehicle, the vehicle was being operated in violation of this chapter; or

3. Permitted the person charged with violating this chapter to operate the vehicle only after examining what appeared to be a valid driver's license; or

4. Expressly prohibited operators of the vehicle, who are not registered owners of the vehicle, from permitting other third-parties to operate the vehicle.

Registered owner means the owner of the vehicle at the time of offense as shown in the vehicle ownership records of the State of Alaska, division of motor vehicles or another agency with similar responsibilities in another state, but may include subsequent good faith purchasers.

Regulated lienholder means an entity whose lien on the vehicle is a result of lending activities subject to regulation by the National Credit Union Administration, the comptroller of the currency or other federal banking regulators, the Federal Trade Commission, or the state department of commerce and economic development.

Vehicle shall have the same meaning as set forth in section 9.04.010.

(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, §

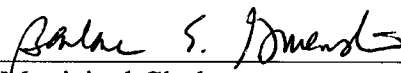
1 1, 7-1-02; AO No. 2001-139, § 2, 7-1-02; AO No. 2001-150, § 6, 8-28-01; AO No.
2 2003-73, §§ 12--14, 4-22-03; AO No. 2003-106, §§ 7, 8, 7-1-03; AO No. 2003-152S, §
3 2, 1-1-04; AO No. 2003-155, § 2, 6-1-04; AO No. 2004-61, § 1, 3-2-04; AO 2006-
4 89(S), § 1, 6-6-06)

5
6 **Section 2.** This ordinance shall be effective immediately upon passage and approval by the
7 Assembly.

8
9 PASSED AND APPROVED by the Anchorage Assembly this 12th day of
10 September, 2006.

11
12
13
14 
15 Chair of the Assembly

16
17
18 ATTEST:

19
20
21 
22 Municipal Clerk

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects -- General Government

AO Number: 2006- 115

Title: AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE SECTION 9.28.026 REGARDING NOTICE AND ADMINISTRATIVE PROCEDURES FOR CIVIL SEIZURE, IMPOUNDMENT AND/OR FORFEITURE, AND RELEASE OF VEHICLES.

Sponsor: Mayor

Preparing Agency: Department of Law

Others Impacted: Anchorage Police Department, Administrative Hearing Office

CHANGES IN EXPENDITURES AND REVENUES: (In Thousands of Dollars)

	FY06	FY07	FY08	FY09	FY10
Operating Expenditures					
1000 Personal Services	58	233	233	233	233
2000 Non-Labor	(7)	(26)	(26)	(26)	(26)
3900 Contributions	N/A	N/A	N/A	N/A	N/A
4000 Debt Service	N/A	N/A	N/A	N/A	N/A
TOTAL DIRECT COSTS:	51	207	207	207	207
Add: 6000 Charges from Others					
Less: 7000 Charges to Others					
FUNCTION COST:	51	207	207	207	207
REVENUES:	(36)	(143)	(143)	(143)	(143)
CAPITAL:	N/A	N/A	N/A	N/A	N/A
POSITIONS: FT/PT and Temp	N/A	N/A	N/A	N/A	N/A

PUBLIC SECTOR ECONOMIC EFFECTS:

This ordinance provides registered owners of seized vehicles the opportunity for a post-seizure probable cause hearing, as required by due process. The Department of Law projects APD will seize over 4,898 vehicles operated by individuals driving under the influence (sections 9.28.020 & 9.28.022); without a valid license (section 9.28.019); while soliciting (section 8.65.030); and/or without insurance (section 9.28.030) in the 2007 calendar year.

This summary of economic effect assumes, of the vehicles seized, 50% will result in a post-seizure hearing before the Administrative Hearing Officer. However, because registered owners have not previously been provided with the opportunity for a post-seizure hearing, there is no adequate means to reasonably forecast how many registered owners will request a post-seizure hearing.

Assuming a 50% post-seizure hearing request rate, personnel costs will be \$233,000; \$123,000 will be Administrative Hearing Officer costs, and \$110,000 will be costs to the Anchorage Police Dept.

Under this ordinance, there will be a reduction in non-labor costs in the amount of \$26,000. This amount is derived from an increased non-labor cost of \$74,000, for towing and storage paid to the towing contractor for vehicles determined by the Administrative Hearing Officer to be seized without probable cause, and from savings gained from a reduction in court costs. Pursuant to current procedure, the Municipality must file a civil action in Alaska district court within two days of seizure. The cost of each civil action is \$90. The Municipality spends a total of \$198,000 in fees to file civil actions, but only recovers 50% of the filing fee costs. Under this ordinance, the Municipality will only file a civil action if the impound or forfeiture of the vehicle is contested, a rare occurrence. Consequently, the non-labor cost of \$74,000 will be offset by \$100,000 in savings gained by a projected reduction in court costs.

Finally, there will be a loss in revenue of \$143,000 associated with the dismissal of cases by the Administrative Hearing Officer for a failure to seize based on probable cause.

The total negative economic impact to the Municipality is estimated at \$350,000 (cost increase of \$207,000 and revenue decrease of \$143,000).

PRIVATE SECTOR ECONOMIC EFFECTS:

No private sector impacts.

Prepared by: Department of Law

Telephone: 343-4545

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 547 -2006

Meeting Date: July 25, 2006

1 **From: MAYOR**

2
3 **Subject: AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY**
4 **AMENDING ANCHORAGE MUNICIPAL CODE SECTION 9.28.026**
5 **REGARDING NOTICE AND ADMINISTRATIVE PROCEDURES**
6 **FOR CIVIL SEIZURE, IMPOUNDMENT AND/OR FORFEITURE,**
7 **AND RELEASE OF VEHICLES.**
8

9 Pursuant to the impound/forfeiture program, set out in Anchorage Municipal Code
10 section 9.28.026, the Anchorage Police Department seizes vehicles operated by
11 individuals driving under the influence (sections 9.28.020 and 9.28.022); without a
12 valid license (section 9.28.019); while soliciting (section 8.65.030); and/or without
13 insurance (section 9.28.030). The vast majority, if not all, of the seizures are incident
14 to an arrest.

15 A recent review of case law regarding the constitutional requirements of due process
16 indicates, if vehicle seizure is incident to an arrest, the Municipality must provide a
17 prompt, post-seizure, probable cause hearing to persons with an interest in the seized
18 vehicle. The primary purpose of the amendments to section 9.28.026, set out in this
19 ordinance, is to meet the constitutional requirement of providing notice of seizure and
20 the opportunity for a post-seizure hearing to all persons with an interest in the seized
21 vehicle.

22 Other amendments include deletions of provisions governed by state law, the addition
23 of evidentiary proofs and presumptions, amendment of the administrative fee for
24 insurance seizures, and other changes for municipal practice and procedure to
25 conform to the code.

26 THE ADMINISTRATION RECOMMENDS APPROVAL OF AN ORDINANCE
27 AMENDING ANCHORAGE MUNICIPAL CODE SECTION 9.28.026 REGARDING
28 NOTICE AND ADMINISTRATIVE PROCEDURES FOR CIVIL SEIZURE,
29 IMPOUNDMENT AND/OR FORFEITURE, AND RELEASE OF VEHICLES.
30

31
32 Prepared by: Department of Law
33 Approved by: Frederick H. Boness, Municipal Attorney
34 Concur: Denis C. LeBlanc, Municipal Manager
35 Respectfully submitted: Mark Begich, Mayor

Content Information

Content ID : 004181

Type: Ordinance - AO

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY
AMENDING ANCHORAGE MUNICIPAL CODE SECTION 9.28.026Title: REGARDING NOTICE AND ADMINISTRATIVE PROCEDURES FOR
CIVIL SEIZURE, IMPOUNDMENT AND/OR FORFEITURE, AND
RELEASE OF VEHICLES.Author: fehlenrl

Initiating Dept: Legal

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY
AMENDING ANCHORAGE MUNICIPAL CODE SECTION 9.28.026Description: REGARDING NOTICE AND ADMINISTRATIVE PROCEDURES FOR
CIVIL SEIZURE, IMPOUNDMENT AND/OR FORFEITURE, AND
RELEASE OF VEHICLES.Keywords: Impoundment, civil seizure, forfeiture, release of vehicles, section
9.28.026

Date Prepared: 7/18/06 4:56 PM

Director Name: Frederick H. Boness

Assembly

Meeting Date 7/25/06

MM/DD/YY:

Public Hearing
Date MM/DD/YY: 8/15/06

Workflow History

Workflow Name	Action Date	Action	User	Security Group	Content ID
AllOrdinanceWorkflow	7/18/06 5:18 PM	Checkin	fehlenrl	Public	004181
Legal_SubWorkflow	7/18/06 5:20 PM	Approve	fehlenrl	Public	004181
OMB_SubWorkflow	7/19/06 9:43 AM	Approve	mitsonjl	Public	004181

M.O.A.
2006 JUL 26 AM 8:22
CLERKS OFFICE

Laid on the Table

CONSENT AGENDA - INTRODUCTION