Submitted by: ASSEMBLY MEMBER OSSIANDER

Prepared by: Assembly Counsel For reading: February 2, 2010

Dec AO 2010-16 (5)

ANCHORAGE, ALASKA AO NO. 2010-16

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE CODE SECTION 9.28.035, ABATEMENT OF VEHICLES OPERATED BY DELINQUENT OFFENDERS, TO ALLOW A NEW DEFENSE TO VEHICLE IMPOUNDMENT.

THE ANCHORAGE ASSEMBLY ORDAINS:

<u>Section 1.</u> Anchorage Municipal Code section 9.28.035, Abatement of vehicles operated by delinquent offenders, is hereby amended to read as follows (*language indicating no amendment is included for context only; amendments to subsection 9.28.035L are set out on page 2; other text not amended is not set out):*

9.28.035 Abatement of vehicles operated by delinquent offenders.

- G. If the registered owner or lienholder was not the person operating the motor vehicle in violation of this section, the registered owner or lienholder may obtain release of the motor vehicle upon:
 - 1. Agreement the registered owner or lienholder shall take reasonable steps to prevent the operation of the motor vehicle in violation of this section;
 - 2. Proof of insurance of the motor vehicle in a form acceptable to the municipality;
 - 3. Proof of ownership or a legal right to repossess the vehicle; and
 - 4. Payment of an administrative fee of \$390.00, towing and storage fees, and any court costs imposed.
- H. If the registered owner or lienholder was the person operating the motor vehicle in violation of this section, the registered owner or lienholder may obtain release of the motor vehicle upon:
 - 1. Complete payment of all delinquent traffic fines;
 - 2. Proof of insurance of the motor vehicle in a form acceptable to the municipality;
 - 3. Proof of ownership or a legal right to repossess the vehicle; and

- 4. Payment of an administrative fee of \$390.00, towing and storage fees, and any court costs imposed.
- I. A motor vehicle seized under this section may be forfeited to the municipality upon order of the court. The municipality may not bring an action for forfeiture unless the action is brought within six months from the date of seizure of the vehicle.
 - 1. To obtain an order for forfeiture the municipality must establish by a preponderance of the evidence the motor vehicle was operated in violation of this section.
 - 2. A registered owner or lienholder may avoid forfeiture and obtain release of the motor vehicle without fees or costs after showing by a preponderance of the evidence the motor vehicle was legally unjustified as defined under Section 9.28.026F.
 - 3. If the registered owner or lienholder fails to show the motor vehicle was legally unjustified, the court shall order the motor vehicle forfeited to the municipality, if the motor vehicle is not retrieved under subsection G. or H., as applicable, within five days of the order.
 - 4. A registered owner or lienholder may, after the commencement of an action under this section, retrieve the motor vehicle under subsection G. or H., as applicable.

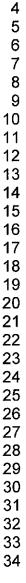
L. Proof a registered owner or lienholder did not <u>know</u> [KNOWN] or could not reasonably have known the vehicle was operated <u>by another</u> in violation of this section is [NOT] a defense to the requirements of release under subsection G. or H., as applicable, or to an action under subsection I.

(AO No. 2007-161, § 5, 12-11-07)

Municipal Clerk

<u>Section 2.</u> This ordinance shall become effective immediately upon its passage and approval by the Assembly.

	PASSED AND , 2010.	APPROVED	by	the	Anchorage	Assembly	this	 _day	of
					Chair			 <u>-</u>	
ATTE	ST:								





MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

NO. AM 56–2010

Meeting Date: February 2, 2010

From:

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ASSEMBLY MEMBER Ossiander

Subject:

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE CODE SECTION 9.28.035, ABATEMENT OF VEHICLES OPERATED BY DELINQUENT OFFENDERS, TO ALLOW A

NEW DEFENSE TO VEHICLE IMPOUNDMENT

The purpose of this ordinance is to change the application of AMC subsection 9.28.035L.

In removing the word "NOT" as shown at line 29, page 2 of the proposed ordinance, the rightful registered owner or lienholder of a vehicle will not be penalized for operation of the vehicle by someone else in violation of AMC 9.28.035L, when the rightful registered owner or lienholder has proof he or she did in fact lack knowledge, or could not have reasonably known, that the vehicle was being operated by another person in violation of AMC 9.28.035.

There are now too many incidents where application of AMC 9.28.035 is shifting the burden away from the unlawful operator, and shifting it to a vehicle owner or lienholder who could not have reasonably known that the vehicle was being operated by another person in violation of AMC 9.28.035.

In the proposed ordinance, a typographical error is also corrected is subsection 9.28.035L, where "known" should be replaced by "know".

Respectfully submitted:

Debbie Ossiander Assembly Member, Section 2