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1 (B) Operated by a person whose license is suspended or revoked as a  
2 result of conviction for driving while intoxicated or suspended or revoked as a  
3 result of a driving while intoxicated arrest.

4 § 7-6-3 ADMINISTRATION.

5 The Police Department shall be responsible for administration of this  
6 article. Reasonable rules and regulations may be prescribed by the Mayor or  
7 his designee to carry out the intent and purpose of this article pursuant to the  
8 standards created by this article.

9 § 7-6-4 VEHICLES SUBJECT TO FORFEITURE.

10 Except as otherwise provided herein, any motor vehicle which has been  
11 declared a vehicle nuisance as defined by § 7-6-2 shall be subject to  
12 temporary seizure or permanent forfeiture.

13 § 7-6-5 SEIZURE; FORFEITURE PROCEEDING.

14 (A) Motor vehicles subject to forfeiture under this article may be seized  
15 by any police officer of the city upon an order issued by the district court.

16 (B) Seizure without such an order may be made if seizure is incident to  
17 an arrest of the driver of the vehicle for driving while intoxicated and/or driving  
18 while his or her license is suspended or revoked as a result of a driving while  
19 intoxicated arrest.

20 (C) A vehicle seized under this article shall not be subject to replevin,  
21 but is deemed to be in the custody of the Police Department seizing it subject  
22 only to the orders and decrees of the district court. The police officer may  
23 take custody of the vehicle and remove it to an appropriate and official  
24 location within the district court's jurisdiction for disposition in accordance  
25 with this article.

26 (D) Immediately after a vehicle is towed for seizure or forfeiture under §  
27 7-6-2, the arresting officer will serve a copy of the Notice of Forfeiture to the  
28 individual whom the vehicle was seized from at the time of arrest. A copy of  
29 the Notice of Forfeiture will be mailed postage pre-paid to the lawfully  
30 registered owner as verified by the New Mexico Motor Vehicle Division by the  
31 municipal employee who is retaining the vehicle in order to notify the owner of  
32 the pending forfeiture. The notice shall contain information to be designated

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1 by the City Attorney's Office, Legal Department, which shall include the  
2 following:

- 3 (1) The license plate number, make, type and color of the vehicle;
- 4 (2) The location the vehicle was seized from;
- 5 (3) A statement that the vehicle has been taken into custody and  
6 stored;
- 7 (4) The reason for seizure;
- 8 (5) A name and phone number or title of municipal employee from  
9 whom the owner can obtain further information;
- 10 (6) A statement that storage charges will be assessed in addition  
11 to a towing charge;
- 12 (7) A statement that the owner has the right to contest the validity  
13 of the impoundment by requesting a hearing in writing within ten (10) days of  
14 the date of mailing of the Notice of Forfeiture;
- 15 (8) Copy of Section 7-6-1, et. seq., ROA 1994.

16 The owner may, request a hearing be scheduled by the city hearing officer.  
17 The hearing, if requested within the period set forth above, shall be conducted  
18 by a city hearing officer appointed by the Mayor. The hearing shall be held and  
19 the hearing officer shall prepare a written decision within twenty (20) working  
20 days (excluding weekends and holidays) of receipt of the request unless the  
21 hearing is continued with the agreement of the parties. The hearing shall be  
22 informal and not bound by the technical rules of evidence. The city hearing  
23 officer shall only determine whether the law enforcement officer had probable  
24 cause to seize the vehicle. The city hearing officer shall mail written notice of  
25 his decision to the owner within two working days of the hearing. If the city  
26 hearing officer finds that the law enforcement officer did not have probable  
27 cause to seize the vehicle in question or that the vehicle should otherwise be  
28 released, he shall issue and date a Certificate of Release, a copy of which shall  
29 be given to the owner of the vehicle. Upon receipt of the owner's copy of such  
30 certificate, the City shall release the vehicle to its owner or the owner's agent,  
31 and storage fees shall be waived. If the owner fails to present such certificate  
32 to the municipal employee having custody of the vehicle within 24 hours of its  
33 receipt, excluding days when the DWI Forfeiture Office is not open for

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1 business, the owner shall assume liability for all subsequent storage charges.  
2 The certificate shall advise the owner of such requirement. If the city hearing  
3 officer determines that the vehicle was properly seized, proceedings for an  
4 order for forfeiture shall be instituted promptly.

5 In the event of seizure pursuant to division (B) of this section, proceedings  
6 for an order for forfeiture shall be instituted promptly. Any person or entity  
7 who, pursuant to the records of the Motor Vehicle Division of the State  
8 Taxation and Revenue Department, has an ownership or security interest in  
9 the subject matter vehicle shall be served with notice of the forfeiture  
10 proceedings.

11 (E) When property is forfeited pursuant to this article, the Police  
12 Department shall sell the motor vehicle, and the proceeds shall be used to  
13 carry out the purpose and intent of this ordinance. Any proceeds that exceed  
14 the costs of administering this ordinance shall be used for DWI enforcement,  
15 prevention and education. Any vehicle not recovered by the owner within 30  
16 days after being notified by the City that such vehicle has been released by  
17 the City shall be deemed abandoned and disposed of in accordance with the  
18 notice provisions of Section 29-1-14, NMSA 1978. Any proceeds from the sale  
19 of abandoned vehicles seized pursuant to this ordinance shall be used to  
20 carry out the purpose and intent of this ordinance.

21 (F) A hearing fee of \$50.00 shall accompany each request for hearing  
22 with the city hearing officer made pursuant to this section.

23 **§ 7-6-6 TEMPORARY SEIZURE/IMMOBILIZATION**

24 Notwithstanding any other provision of this Ordinance, in the interest of  
25 public safety and health, the Police Department may seize a vehicle at the time  
26 of an arrest of a person for driving while intoxicated or impaired and may offer  
27 the owner an opportunity to voluntarily request the alternative of  
28 immobilization of the vehicle for a period of thirty (30) days. Such  
29 immobilization may be accomplished by an Immobilization Device (Boot) at  
30 the owner's designated location within the City of Albuquerque, or by  
31 impoundment at a secure facility, in accordance with procedures established  
32 by the Police Department. The owner shall pay the Police Department a fee for  
33 this voluntary, temporary seizure/immobilization and sign an Immobilization

1 Agreement with the City of Albuquerque. Such temporary  
2 seizure/immobilization shall be imposed after opportunity for a probable cause  
3 hearing as provided for in this ordinance. The Boot shall be removed and the  
4 vehicle released by the Police Department, only after the owner has produced  
5 proof that and ignition interlock device has been installed by a certified vender  
6 of such devices. Additionally, the owner must produce proof that of a contract  
7 for the maintenance of such device by the certified vendor for a minimum  
8 period of six (6) months if the BAT score was .08 to .15 and a minimum  
9 contract of twelve (12) months if the BAT is aggravated by BAT score (.16 or  
10 greater) or by refusal in violation of the New Mexico Implied Consent Act  
11 (Sections 66-8105 through 66-8-112 NMSA (1978).

12 **§7-6-7 PROPERTY INTEREST NOT SUBJECT TO FORFEITURE.**

13 Notwithstanding § 7-6-4 any forfeiture shall be subject to the interest of:

14 (A) Any owner or co-owner of the vehicle who did not have knowledge  
15 of, nor consented to, the use of the vehicle by the driver who caused the  
16 vehicle to become a nuisance, provided that upon establishment of a prima  
17 facie case of lack of knowledge or consent by the owner or co-owner, the  
18 burden of proving knowledge and consent shall be upon the city; or

19 (B) Any secured party, to the extent of the security interest, if the  
20 secured party proves that the security interest was acquired in good faith with  
21 no knowledge or reason to believe that the vehicle would be used by the driver  
22 whose license has been suspended or revoked. If the security interest is  
23 greater than the value of the vehicle, title shall be transferred to the secured  
24 party upon motion to the district court. Any secured party acquiring an  
25 interest after the vehicle is in the custody of the police department shall have  
26 the burden of intervening in the forfeiture proceeding to protect such interest.  
27 Any interest in the vehicle must be properly filed with the New Mexico Motor  
28 Vehicle Department in accordance with Sections 66-3-201 and 66-3-202 NMSA  
29 1978 before the date of incident leading to the seizure.

30 Section 2. Severability Clause. If any section, paragraph, word or phrase  
31 of this ordinance is for any reason held to be invalid or unenforceable by any  
32 court of competent jurisdiction, such decision shall not affect the validity of  
33 the remaining provisions of this ordinance. The Council hereby declares that

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1 it would have passed this ordinance and each section, paragraph, sentence,  
2 clause, word or phrase thereof irrespective of any provision being declared  
3 unconstitutional or otherwise invalid.

4 Section 3. **Compilation.** This Ordinance shall be incorporated in and  
5 made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

6 Section 4. **Effective Date:** This ordinance shall take effect five days after  
7 publication in full.

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