

ORDINANCE NO. 6178, AS AMENDED

AN ORDINANCE TO AMEND FGC CHAPTER 78, ARTICLE XXII, MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE, TO REMOVE DRIVING WHILE LICENSE SUSPENDED AND NO INSURANCE CONVICTIONS

WHEREAS, Article XXII of Chapter 78 of the Fairbanks General Code, Motor Vehicle Impoundment and Forfeiture, was originally enacted in 1998 pursuant to the authority of AS 28.35.038; and

WHEREAS, Article XXII was amended in 2002 to add Driving While License Suspended and No Insurance to the offenses that would subject a vehicle to impoundment or forfeiture; and

WHEREAS, it is the sense of the Council that impoundment and forfeiture of vehicles under Article XXII should be limited to vehicles used in the commission of the crimes of driving while intoxicated and refusal, as originally enacted.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

Section 1. That Fairbanks General Code Chapter 78, Article XXII, Motor Vehicle Impoundment and Forfeiture is amended as follows [new text in **bold/underline** font; deleted text in ~~strikethrough~~ font]:

ARTICLE XXII. - MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE

Sec. 78-961. Definitions.

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

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

Driver means a person who drives or is in actual physical control of a vehicle.

Motor vehicle means a vehicle which is self-propelled except a vehicle moved by human or animal power.

Previously convicted means having been convicted in this or another jurisdiction within ten years preceding the date of the present offense, of operating a motor vehicle, aircraft or watercraft while intoxicated under AS 28.35.030 or another law or ordinance with

substantially similar elements, or a refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantial similar elements, ~~or driving a motor vehicle while license suspended, canceled, revoked, or limited under AS 28.15.291 or another law or ordinance with substantially similar elements, or driving a motor vehicle without insurance or other security under FGC section 78-929 or another law or ordinance with substantially similar elements.~~

Registered owner refers to the owner of the vehicle at the time of the offense as shown in the vehicle ownership records of the state division of motor vehicles or another agency with similar responsibilities in another state but may include subsequent good-faith purchases.

Regulated lienholder means an entity whose lien on the vehicle is a result of lending activities that are subject to regulation by any federal or state agency, commission or department.

Vehicle means a device in, upon or by which a person or property may be transported or driven upon immediately over a highway, road or other public right-of-way.

Sec. 78-962. Purpose; public nuisance.

A motor vehicle that is operated, driven or in actual physical control of an individual arrested for or charged with a violation of AS 28.35.030, pertaining to driving while intoxicated, ~~or; a violation of AS 28.35.032, pertaining to refusal to submit to chemical tests; or a violation of AS 28.15.291, pertaining to driving while license canceled, suspended, revoked, or limited; or a violation of FGC section 78-929, pertaining to insurance or other security requirements,~~ may be impounded and may be forfeited to the city in accordance with this article. The purpose of this article is to protect the public by removing public nuisances and deterring driving while intoxicated. A vehicle operated in violation of the afore-stated statutes is declared to be a public nuisance for which the registered owners shall be legally responsible subject only to defenses set forth by law.

Sec. 78-963. Presumptions; vehicle seizure.

(a) It shall be presumed that a vehicle operated by or driven by or in the actual physical control of an individual arrested for or charged with a violation of AS 28.35.030 or AS 28.35.032, ~~or AS 28.15.291, or FGC section 78-929~~ has been so operated by the registered owner or has been operated by another person with the knowledge and consent of the registered owner.

(b) A vehicle used in the alleged violation of AS 28.35.030 or AS 28.35.032, ~~or AS 28.15.291, or FGC section 78-929~~ shall be impounded for 30 days if the person driving, operating, or in the actual physical control of the vehicle has not been previously convicted, and shall be forfeited to the city if the person **driving, operating, or in the actual physical control of the vehicle** has been previously convicted.

(c) Impoundment may occur through a seizure of the vehicle incident to an arrest at the discretion of the arresting officer or by a court order.

Sec. 78-964. Jurisdiction; hearings; costs.

(a) Civil impoundment or forfeiture cases may be heard and decided by ~~either the district court, an administrative hearing officer, or the parking authority,~~ which throughout this article may be referred to as "the court" or "a court." ~~Hearings before an administrative hearing officer shall take place no less than seven days and no more than 30 days after the registered owner or lienholder requests a hearing.~~ At the request of the city or a claimant, a civil proceeding under this section may ~~shall~~ be postponed until the conclusion of any pending criminal charges arising out of the incident giving rise to the proceeding under AS 28.35.030 or AS 28.35.032, ~~AS 28.15.291 or FGC section 78-929.~~

(b) The court shall award the prevailing party in an impoundment or forfeiture case ~~its~~ reasonable attorney's fees and costs pursuant to Rule 82, Alaska Rules of Civil Procedure. ~~Costs shall include but are not limited to filing costs, advertising costs, police officer time required for testimony, prosecution costs, and other costs incurred in processing the case.~~

Sec. 78-965. Notice to lienholders and parties of record; service by publication; failure to appear.

(a) A lienholder and any party having an interest in the vehicle as shown by the vehicle ownership records of ~~by~~ the division of motor vehicles or any agency in any state where the vehicle is registered shall be served with notice of the civil action by certified mail sent to the address of record as shown in the ownership records. In a forfeiture action, the city may serve a party of record personally or by publication if mail service is unsuccessful.

(b) Service by publication in a forfeiture proceeding shall describe the vehicle, the date and place of impoundment and a contact person and shall be published once per week for two consecutive weeks in a newspaper of general circulation.

(c) Any party who fails to appear within 30 days of service of notice of an impoundment or forfeiture waives the right to object to impoundment or forfeiture. Any party who requests a hearing in a civil action shall be deemed served. For actions filed in district court, district court civil rules ~~shall~~ apply. Requests for release of a vehicle made by a person or entity not charged with a violation of AS 28.35.030 or AS 28.35.032, ~~AS 28.15.291 or FGC section 78-929~~ must be brought in the forum of the civil action.

Sec. 78-966. Avoidance of impoundment or forfeiture by owners and lienholders; defenses.

(a) An owner or lienholder of record may avoid impoundment or forfeiture of that person's interest if they ~~the claimant~~ can establish by a preponderance of the evidence that:

- (1) The **owner or lienholder** claimant had an interest in the motor vehicle at the time of the alleged violation or which was acquired in good faith after the violation and not to avoid impoundment or forfeiture;
- (2) A person other than the **owner or lienholder** claimant was in possession of the vehicle and was responsible for the act which resulted in impoundment or forfeiture; and
- (3) Before permitting the operator to gain custody or control of the vehicle, the **owner or lienholder** claimant did not know or have reasonable cause to believe that the vehicle would be operated in violation of AS 28.35.030 **or** AS 28.35.032, ~~AS 28.15.291 or FGC section 78-929.~~

(b) A regulated lienholder may meet the requirements of this section by filing with the court a copy of the vehicle's certificate of title or other security instrument reflecting the lien, with an affidavit stating the amount of the lien, ~~and~~ that the lienholder is a regulated lienholder, and that the lienholder was not in possession of the vehicle at the time of the act which resulted in the seizure of the vehicle.

(c) A regulated lienholder ~~has~~ **shall** have no 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 ~~may~~ **shall** not be used ~~as~~ **ed** as evidence against the regulated lienholder in any forfeiture proceeding or other civil action.

(d) A regulated lienholder's interest in a vehicle ~~is~~ **shall** not ~~be~~ subject to forfeiture in any case where:

- (1) The individual who allegedly used the vehicle in violation of AS 28.35.030 **or** AS 28.35.032, ~~AS 28.15.291 or FGC section 78-929~~ is not the person whose dealings with the lienholder gave rise to the lien; or
- (2) The vehicle which the individual was driving, operating or was in actual physical control of at the time of the violation was not the vehicle involved in a prior conviction.

(e) An acquittal in a criminal proceeding under AS 28.35.030 **or** AS 28.35.032, ~~AS 28.15.291 or FGC section 78-929~~ ~~shall~~ **constitutes** a defense against impoundment or forfeiture of a vehicle if the civil proceeding is based on the same conduct that forms the basis for the criminal charge.

~~(f) A person convicted under FGC section 78-929(b) for the first time may avoid the 30-day impoundment under this article: (1) by presenting proof of insurance in effect no later than 30 days after the date of the offense; (2) by paying the applicable fine under section 78-929; (3) by paying the applicable charges for towing and storage; and (4) by paying an administrative fee of \$140.00.~~

Sec. 78-967. Presumptions; knowledge of violation.

~~(a) When a person other than the claimant was in possession of the vehicle and was driving with a suspended, revoked or canceled license, or without a valid driver's license, or in violation of a limited license, it shall be presumed that the claimant had reasonable cause to believe that the vehicle would be used in violation of AS 28.35.030, AS 28.35.032, AS 28.15.291 or FGC section 78-929. This subsection shall not apply to regulated lienholders.~~

~~(b) When the owner claimant and driver are not the same person but and have a familial relationship, such as husband/wife, father/daughter, mother/stepson, etc., it shall be presumed that the owner claimant is responsible and that the vehicle was operated by the driver with the knowledge and consent of the owner claimant.~~

Sec. 78-968. Hearing notification.

Upon notification from the court of the time and place for a hearing in a civil action, the city shall provide to every person, unless such person was notified by the court, who has an ascertainable ownership or security interest in the vehicle written notice that includes:

- (1) A description of the motor vehicle;
- (2) The time and place of the forfeiture or impound hearing;
- (3) The legal authority under which the vehicle may be impounded or forfeited; and
- (4) Notice of the right to intervene to protect the interest in the motor vehicle.

Sec. 78-969. Seizure; evidence; burden of proof.

(a) A seizure of a vehicle under this Article is legally unjustified only if there was:

- (1) No reasonable suspicion for the stop of the vehicle leading to an arrest for driving while intoxicated based on the operation, driving, or actual physical control of the vehicle; or
- (2) No probable cause for the arrest of an individual for driving while intoxicated based on the individual's operation, driving, or actual physical control of the vehicle.

(b) For purposes of proceedings in an administrative forum, the police report, which may include the narrative, accompanying documents, computer printouts 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, 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 city in a statement made under oath.

(c) The burden of proof for an action under this article is preponderance of the evidence.

Sec. 78-970. Resolution agreement between city and owner/lienholder.

(a) The city may enter into an agreement with the registered owner or lienholder of the vehicle to resolve a civil impound or forfeiture action and permit release of the vehicle. Any such agreement shall include:

- (1) Acceptance by the owner or lienholder of responsibility for meeting the requirements of this section;
- (2) Agreement that the owner or lienholder will take reasonable steps to prevent the person arrested for or charged with a violation of AS 28.35.030, **or** AS 28.35.032, ~~or AS 28.15.291 or FGC section 78-929~~ from operating the vehicle until properly licensed; and
- (3) Agreement by the owner or lienholder that failure to fulfill the obligations under the agreement may result in forfeiture of the vehicle at the option of the city unless the lienholder is regulated and is required by law or the terms of the security agreement to relinquish possession of the vehicle upon payment of the lien or cure of any default.

Sec. 78-971. Release of motor vehicle.

A person seeking to redeem a vehicle must obtain an order **from the court** authorizing release of the vehicle, unless the release is made under an agreement with the city **or if the underlying criminal case is dismissed or resolved in a manner whereby the defendant is not convicted under AS 28.35.030 or 28.35.032.** A release **will** ~~shall~~ not be granted unless the person can:

- (1) Provide proof of ownership or, if a lienholder, a legal right to repossess the vehicle; and
- (2) Pay or provide proof of payment of any costs imposed, including the impound fees, storage fees, and any court costs imposed. The impound fee ~~is shall be~~ the actual cost of impound plus an administrative charge to offset the city's processing costs. If the city agrees or the court finds that seizure of a vehicle was **not** legally ~~un~~justified, **or if the underlying criminal case is dismissed or resolved in a manner whereby the defendant is not convicted under AS 28.35.030 or 28.35.032,** the vehicle **will** ~~shall~~ be released at no cost. ~~If the person seeking to reclaim the vehicle does so within five days after the court's finding. A vehicle not claimed it within ten five days after the court's decision,~~ **the vehicle** is subject to the **daily**

storage fee, as provided in the City's Schedule of Fees and Charges for Services, for every day thereafter until the vehicle is reclaimed
~~provisions of AS 28.10.502, relating to towing and storage liens.~~

Sec. 78-972. Bail release of motor vehicle; vehicle bond; amount of bond; costs; retrieval of personal items.

~~(a) A person not charged with a violation of AS 28.35.030, AS 28.35.032, AS 28.15.291 or FGC section 78-929 may petition the court for a bail release of a motor vehicle before a civil action is filed.~~

~~(b) A vehicle return bond **will** shall be set for each vehicle alleged in the complaint to have been used in an alleged violation of AS 28.35.030 **or** AS 28.35.032, ~~AS 28.15.291 or FGC section 78-929~~. The bond **must** may be posted in cash ~~only~~. The purpose of this bond is to secure the presence of the vehicle and to provide security to be forfeited if the vehicle is sold, transferred, or encumbered after the vehicle has been released pending hearing. If a vehicle is not returned on a return bond, the city may forfeit the bond funds and seize the vehicle to implement the impoundment or forfeiture ordered by the court. The court may not modify the bond requirement or release a posted bond for a vehicle which has been impounded for a period less than the vehicle would have been impounded for if the person was convicted.~~

~~(be) If a person charged with a violation of AS 28.35.030 **or** AS 28.35.032, ~~AS 28.15.291 or FGC section 78-929~~ has no previous convictions for those statutes, the minimum vehicle return bond **is** shall be \$500.00. Where the person charged has been previously convicted of **either** any of the offenses above, the minimum vehicle bond **will** shall be specified in the City's ~~S~~chedule of ~~F~~ees and ~~C~~harges for ~~S~~ervices, which may be amended by city council resolution. A vehicle return bond may be set above the minimum if the vehicle appears to have unusually high value for its age but not to exceed twice the minimum amount.~~

~~(cd) A vehicle under this section may be released pending hearing upon proof of ownership of the vehicle, payment of the vehicle return bond, and payment of towing and storage fees, including the administrative fee as set forth in the City's ~~S~~chedule of ~~F~~ees and ~~C~~harges for ~~S~~ervices, to offset the city's processing costs.~~

~~(de) The court may order all or any part of the vehicle return bond to be forfeited to the city and may also order that the proceeds of any sale, transfer, or encumbrance be forfeited if the vehicle has been sold, transferred, or encumbered while subject to a vehicle return bond, if the vehicle is not returned in accordance with an order entered in the case requiring impoundment or forfeiture.~~

(e) The vehicle owner, or a person with the owner's written permission, may retrieve personal items from the impounded vehicle upon payment of the access fee as set forth in the City's Schedule of Fees and Charges for Services.

Sec. 78-973. Impoundment; seizure incident to arrest; impoundment period; abandoned vehicle disposal; personal property in vehicles.

(a) A motor vehicle that is operated, driven, or in the actual physical control of a person arrested for or charged with a violation of AS 28.35.030 or AS 28.35.032, ~~AS 28.15.291 or FGC section 78-929~~ may be ordered impounded either upon conviction of the person for the offense or upon the decision of the court in a separate civil proceeding. To obtain an order for the impoundment in a contested proceeding, the city must establish by a preponderance of the evidence that the vehicle was operated, driven, or in the actual physical control of a person who was acting in violation of AS 28.35.030 or AS 28.35.032; ~~AS 28.15.291 or FGC section 78-929.~~

(b) If the motor vehicle is seized 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. For purpose of computing the two-day period, Saturdays, Sundays and city legal holidays are not ~~to be~~ included.

(c) A vehicle which is ordered impounded under this section will ~~shall~~ be held for a period of 30 days. An impoundment order may be made either upon conviction of the person of a violation of AS 28.35.030 or AS 28.35.032, ~~AS 28.15.291 or FGC section 78-929~~, or upon decision of a court in a separate civil action.

(d) ~~The owner of a v~~Vehicles ordered impounded under this section must pay any fees owed and must retrieve the vehicle within 30 days after the completion of the 30-day impoundment., 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. Daily impound fees will cease accruing after the completion of the 30-day impoundment but will start accruing if the vehicle has not been retrieved within 30 days after the completion of the impoundment. Vehicles not retrieved within 90 days of the completion of the 30-day impoundment will be considered abandoned and may be disposed of without further notice to the owner. If the contents of the vehicle have not been recovered before such disposal, the contents may be disposed of with the vehicle. ~~Charges for towing, access to the impounded vehicle and storage fees are as set forth in the city's schedule of fees and charges for services.~~

Sec. 78-974. Forfeiture process.

(a) A motor vehicle that is operated, driven, or in the actual physical control of a person arrested or charged with a violation of AS 28.35.030 or AS 28.35.032, ~~AS 28.15.291 or FGC section 78-929~~ may be forfeited to the city either upon conviction of either ~~any~~ of the offenses listed above or upon decision of a court in a separate civil proceeding. To obtain an order of forfeiture in a contested proceeding, the city must establish by a preponderance of the evidence that the vehicle was operated, driven, or in the physical control of the person acting in violation of either offense and that the individual has been previously convicted.

(b) A motor vehicle may be seized and towed to a secure location by a police officer or a police 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. Seizure without a court order may be made if:

- (1) The impoundment is incident to an arrest;
- (2) The motor vehicle has been ordered impounded or forfeited and that order has not yet been executed; or
- (3) There is probable cause to believe that the motor vehicle was operated, driven or in the actual physical control of a person in violation of AS 28.35.030 or AS 28.35.032, ~~AS 28.15.291 or FGC section 78-929.~~

~~(c) A court may order impoundment of a motor vehicle subject to forfeiture in a civil action for a minimum of 30 consecutive days.~~

Sec. 78-975. Custody of vehicle; police department; inventory; retrieval of ignition interlock devices.

(a) A motor vehicle seized for the purpose of forfeiture or impoundment will ~~should~~ be held in the custody of the city or a private impound yard authorized by the city to retain custody of the vehicle, subject only to the orders and decrees of the court having jurisdiction over any forfeiture or impoundment proceedings. When a motor vehicle is seized, the city ~~police chief or an authorized designee~~ may:

- (1) Remove the motor vehicle and any contents in the vehicle to a place designated by the court; or
- (2) Take custody of the motor vehicle and any contents of the vehicle and remove it to an appropriate location for disposition; and
- (3) Allow the owner of an ignition interlock device installed in a vehicle held pending forfeiture to retrieve the device upon a showing of proof of ownership and execution of a written agreement to assume liability for damage caused during retrieval. The city will cross check impounded vehicles against a data base provided by ignition interlock owners and notify device owners of vehicle impound. The fee for this service and access shall be as provided in the Ccity's Schedule of Fees and Charges for Services.

(b) Following a forfeiture, the police department shall make an inventory of the contents of any motor vehicle seized. Personal property can be recovered from the vehicle in the same manner as set forth in section 78-9723(e).

(c) A person in a forfeiture action claiming an interest in the property shall file, within 30 days after service or completion of publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the city's allegations. If a claim and answer is not filed within the required time, the motor vehicle ~~may~~ **must** be forfeited to the city without further proceedings. For a regulated lienholder, the notice of claim and answer is met by the filing of information required in section 78-966 and by adding to the affidavit a statement of the original amount of the loan giving rise to the lien and the current balance due on that loan.

(d) A claimant may petition the court for sale of a motor vehicle before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interest of the city. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action.

Sec. 78-976. Disposition of forfeited property; return to claimant.

(a) Property forfeited under this article ~~will~~ **shall** be disposed of by the ~~city police department~~ **city police** in accordance with this section. Property forfeited includes both the vehicle and its contents if those contents have not been recovered before the date of disposal. The ~~city police department~~ **city police** may:

- (1) Sell the property in a manner that will yield the best price and use the proceeds for payment of all expenses of seizure, custody, court costs, and attorney's fees;
- (2) Take custody of the property and use it in the enforcement of city and state criminal codes **or for other public purpose**; or
- (3) Destroy the property.

(b) When a claimant to a motor vehicle is entitled to its possession, the court shall order that:

- (1) The vehicle be delivered to the claimant immediately subject to costs as described in section 78-971; or
- (2) If the claimant is entitled to some value less than the total value of the motor vehicle, the claimant is entitled to receive either the value of the claimant's interest after the sale of the vehicle or upon request and payment of the difference in value by the claimant, the motor vehicle itself.

(c) When a vehicle is sold and lienholder interest exceeds the sale price, the owner may be held responsible for the difference and the city's cost.

Sec. 78-977. - Multiple ownership on certificate of title.

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 proceed as follows:

- (1) 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, which is signified by the word "or."
- (2) If **one** ~~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 which is signified by the word "and." 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. Under 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 city's department of finance. After deduction of the reasonable costs of the auction, the 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 **will** ~~shall~~ be returned to those owners if those owners apply to the department of finance within 60 days of the auction. If the owners whose interests have not been forfeited do not apply within that period, those funds become the property of the city subject to the rights of any other claimant to those funds.

Section 2. That the effective date of this ordinance is the _____ day of August 2021.

Jim Matherly, Mayor

AYES:
NAYS:
ABSENT:
ADOPTED:

ATTEST:

APPROVED AS TO FORM:

D. Danyielle Snider, MMC, City Clerk

Paul Ewers, City Attorney