

State of New Mexico
County of Torrance

I hereby certify that this instrument was
filed for record on the 14th day
of May A.D., 2004
at 9:54 o'clock A M and duly
recorded in book 302 at page 766-772



Witness my hand and Seal of Office

[Signature]
County Clerk, Torrance Co., N.M.
Deputy

ORDINANCE NO. 2004-1

An Ordinance Abating Motor Vehicle Nuisances Relating to DWI Offenses

WHEREAS, New Mexico state statute, NMSA 1978, § 4-37-1, grants the Board of County Commissioners the authority to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the county or its inhabitants, and allows the County to establish ordinances consistent with these powers; and

WHEREAS, law enforcement statistics within the state of New Mexico and the County of Torrance reflect that the safety of the public is placed at increased risk of harm by persons who repeatedly drive under the influence of alcohol or drugs, despite restrictions imposed upon their driving privileges such as revocation or suspension of their license or a prerequisite ignition interlock system, and by those who have two or more previous arrests for driving under the influence of alcohol or drugs; and

WHEREAS, the New Mexico Supreme Court has recently upheld an ordinance enacted by the City of Albuquerque designed to obtain the civil forfeiture of motor vehicles from those motorists who drive after revocation of their licenses for DWI or who have been arrested for a third or subsequent DWI offense after having two previous convictions for DWI, and the Board of Commissioners has deemed it necessary to protect the health and safety and prosperity of the County's residents to also seek civil forfeiture for similar violations within its jurisdiction;

NOW THEREFORE, the Board of Commissioners of Torrance County hereby enacts the following Ordinance, to abate motor vehicle nuisances that endanger the lives of Torrance County public traveling the public roads and thoroughfares:

ARTICLE I. SHORT TITLE AND JURISDICTION

This Ordinance is passed pursuant to the statutory grant of authority contained in New Mexico state statutes, NMSA 1978, § 4-37-1, and shall be referred to as the "Torrance County DWI Vehicle Forfeiture Ordinance". This Ordinance shall be effective and enforced within the geographical boundaries of Torrance County, excluding the territory within the boundaries of duly incorporated municipalities.

ARTICLE I. PURPOSE

It is the intent of the Board of Commissioners, by passing this Ordinance:

- A. To abate motor vehicle nuisances, in order to protect the physical and emotional health, safety, and financial interests of the public placed at risk by persons who repeatedly choose to drive while under the influence of alcohol or drugs in violation of law, or who drive in violation of the driver's license restrictions, including any required ignition interlock equipment. Among the dangers created by these types of unlawful activities are the potential for serious bodily injury and loss of life to innocent persons and families, as well as considerable property damage.
- B. To remedy the substantial risk of harm the public is faced with when vehicles are driven by persons:
 - 1. arrested for a third or subsequent offense of DWI, after two or more previous convictions for DWI, or
 - 2. arrested for operating a motor vehicle in violation of restrictions imposed by the State for DWI revoking or suspending the driver's license, or imposing a prerequisite ignition interlock device, or
 - 3. under the age of twenty one (21) arrested for DWI after one or more previous convictions for DWI.

ARTICLE III. VEHICLE NUISANCE

A motor vehicle is hereby declared to be a public nuisance and subject to civil proceedings for its temporary seizure or permanent forfeiture pursuant to the provisions of this Ordinance if it is:

- A. operated by a person who has previously been convicted or pled guilty or no contest to two or more prior DWI offenses, in or out of New Mexico, who is arrested for a third or subsequent DWI offense, or
- B. operated by a person who has previously been convicted or pled guilty or no contest to a DWI offense, or had his driver's license suspended or revoked as a result of driving while intoxicated, in or out of New Mexico, pursuant to New Mexico or other state's law, including that of implied consent, and is subsequently arrested for a DWI offense, or
- C. operated by a person subject to mandatory utilization of an ignition interlock device, who is then arrested for a DWI offense, or

- D. operated by a person whose license is subject to a current revocation or suspension prohibiting them from driving as a result of a DWI offense, and/or whose license is conditioned upon the use of an ignition interlock device, and the terms and conditions of the State's DWI restrictions are violated, or
- E. operated by a person under the age of twenty-one (21), who has previously been convicted or pled guilty or no contest to DWI, who is arrested for a second or subsequent DWI offense.

ARTICLE IV. ADMINISTRATION

The Torrance County Sheriff's Department shall be responsible for administration of this Ordinance. Procedures and forms may be established by the Sheriff, with the approval of the County Manager, to facilitate the implementation of this Ordinance.

ARTICLE V. VEHICLES SUBJECT TO FORFEITURE

Except as otherwise provided herein, any motor vehicle which has been declared to be a public nuisance as defined by this Ordinance shall be subject to civil temporary seizure or permanent forfeiture proceedings.

ARTICLE VI. SEIZURE; FORFEITURE PROCEEDING

- A. An arresting officer may seize a vehicle, and pursue civil forfeiture proceedings to permanently remove the vehicle, at the time of arrest under the following circumstances warranting same, in the interest of the public's health and safety:
 1. an arrest of the person for driving while intoxicated, who has at least two prior convictions of record (includes no contest and guilty pleas) for DWI, or
 2. an arrest of the person for driving while intoxicated, who has previously had his driver's license suspended or revoked as a result of driving while intoxicated, in or out of New Mexico, pursuant to New Mexico or other state's law, including that of implied consent, or
 3. a. an arrest of a person for driving while intoxicated, while subject to restrictions upon his driver's license requiring ignition interlock device imposed as a result of driving while intoxicated, or
 - b. an arrest of a person for driving a vehicle subject to a prerequisite ignition interlock device restriction, and the vehicle is not so equipped, or

4. an arrest of the person for driving while his or her license is suspended or revoked as a result of driving while intoxicated, or
 5. an arrest of a person under the age of twenty-one (21) for driving while intoxicated, who has at least one prior conviction of record (includes no contest and guilty pleas) for DWI.
- B. A vehicle seized under this Ordinance shall not be subject to replevin; rather, it shall be maintained in the custody of the Sheriff's Department, subject only to the orders and decrees of the District Court.
- C. The arresting officer seizing a vehicle shall make arrangements for its removal from the scene to an appropriate official location within the District Court's jurisdiction for disposition in accordance with this Ordinance. At the time of seizure, the deputy sheriff shall provide a copy of the Notice of Seizure to the driver.
- D. As soon as practicable after seizure of a vehicle, the arresting officer will also mail by first class U.S. mail a copy of the Notice of Seizure to all title owners of record, as lawfully registered with the New Mexico Motor Vehicle Division. The Notice of Seizure shall contain the following information:
1. The license plate number.
 2. The make, model and color of the vehicle.
 3. The location the vehicle was taken from.
 4. A statement that the vehicle has been taken into custody and stored.
 5. The reason for the seizure.
 6. The name, job title, and phone number for the Sheriff's Department or County employee from whom the owner may obtain further information.
 7. A statement that both a towing fee and a daily storage charge will be assessed.
 8. A statement that the owner has the right to contest the validity of the seizure by requesting a hearing in writing within ten (10) days of the mailing of the Notice of Seizure.
 9. A copy of this Ordinance.
- E. Upon timely submittal of a request for hearing, an objective and qualified Hearing Officer, shall schedule and conduct same within ten (10) work days (excludes weekends and holidays honored by the County), unless otherwise continued with the agreement of the parties. The Hearing Officer shall mail notice of the hearing to the person requesting the hearing, and also provide copies of any procedures that will be applied during the hearing process.
- F. The hearing shall be informal and not bound by the technical rules of evidence. The Hearing Officer shall determine only whether the law enforcement officer had sufficient probable cause to seize the vehicle. The

Hearing Officer shall render and mail to the parties a written decision reflecting his findings and conclusions within two (2) work days (excludes weekends and holidays), from the date the hearing concluded, unless otherwise extended with the agreement of the parties.

- G. If the Hearing Officer finds that the law enforcement officer did not have sufficient probable cause to seize the vehicle in question or that the vehicle should otherwise be released, he shall issue and date a Certificate of Release.
1. A copy of the Certificate of Release shall be mailed by first class U.S. mail to each title owner of record, as reflected in the N.M. Motor Vehicles Department records.
 2. Upon receipt of the owner's copy of such Certificate, the County shall release the vehicle to its owner or the owner's agent, and storage fees up through a twenty-four (24) hour period following the issuance of the Certificate shall be waived. Storage fees accruing after the twenty-four (24) hour period following the owner's receipt of the Certificate (excluding days when the storage lot may not be open for business) shall be paid by the owner.
 3. Any vehicle not recovered by the owner within thirty (30) days after being notified that such vehicle has been released by the County shall be deemed abandoned and disposed of in accordance with the notice provisions of Section 29-1-14, NMSA 1978. Any proceeds from the sale of vehicles seized pursuant to this Ordinance in excess of those needed to administer this Ordinance may be used for DWI prevention and education and for PAL programs and other youth improvement programs, at the discretion of the Sheriff.
- H. If the Hearing Officer determines that there was probable cause for seizure of the vehicle, proceedings to petition for an Order of Forfeiture shall be instituted promptly, and served upon each title owner of the record, as reflected in the New Mexico Motor Vehicle Division records.
- I. When property is forfeited or temporarily seized pursuant to this Ordinance, the Torrance County Sheriff's Department shall arrange for the sale of the motor vehicle by public auction, and the proceeds from such sales, as well as the proceeds from payments by owners agreeing voluntarily to immobilization devices in excess of those needed to administer this Ordinance may be used for DWI prevention and education and for PAL programs and other youth improvement programs, at the discretion of the Sheriff.

ARTICLE VII. TEMPORARY SEIZURE

In the interest of the public's health and safety, an arresting officer shall also seize a vehicle at time of arrest of a person for driving while intoxicated, if that person has a previous conviction of record (includes guilty and no contest pleas) for DWI, and seek to immobilize the vehicle for thirty (30) days following date of arrest. The thirty (30) day immobilization may be accomplished by an immobilization device at the expense of the owner or by impoundment to a secure facility, in accordance with the procedures established by the Sheriff. The thirty (30) day immobilization shall be imposed after the opportunity for a hearing relating to probable cause is provided, as outlined in Article VI. The temporary immobilization of the vehicle shall also be subject to the rights of innocent third party owners set forth in Article VIII.

ARTICLE VIII. PROPERTY INTEREST PROTECTED FROM TEMPORARY SEIZURE AND FORFEITURE

Notwithstanding the fact that a vehicle may be subject to forfeiture or temporary seizure under this Ordinance, such forfeiture or temporary seizure shall be subject to the interest of:

- A. Any co-owner who did not have knowledge of, nor consent to, the use of the vehicle by the driver who caused the vehicle to become a nuisance. The burden of establishing a prima facie case of lack of knowledge or consent is upon the co-owner of the driver; once this is proven, the burden of proving knowledge and consent shall be upon the County.
- B. Any secured party, to the extent of the security interest, if the secured party proves that the security interest was acquired in good faith with no knowledge or reason to believe that the vehicle would be used by the driver whose license has been suspended or revoked. If the security interest is greater than the value of the vehicle, title shall be transferred to the secured party upon motion of the District Court.
- C. In order for a co-owner or secured party's interest to be recognized under subsection A. and B. above, the interest claimed in the vehicle must be properly filed with the New Mexico Motor Vehicle Department in accordance with Sections 66-3-201 and 66-3-202 NMSA 1978 before the date of the incident leading to the seizure. Any party acquiring an interest in the vehicle after the vehicle has been taken into custody of the Torrance County Sheriff's Department shall have the burden of intervening in the forfeiture proceeding to protect such interest.

ARTICLE IX. SEVERABILITY

If any section, paragraph, sentence or clause of this Ordinance is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not

affect the validity of the remaining provisions of this Ordinance. The Board of County Commissioners hereby declares that it would have passed this Ordinance irrespective of any provision being declared unconstitutional or otherwise invalid. Additionally, should any provision of this ordinance conflict with a provision of another applicable civil law or regulation relating to forfeiture of vehicles, the stricter provision shall apply, unless more specifically preempted, in which case, the severability provision above will govern.

ARTICLE X. EFFECTIVE DATE

This Ordinance shall be effective June 12th, 2004.

PASSED AND ADOPTED, AS AMENDED ON THIS 12th DAY OF MAY, 2004.

**BOARD OF COUNTY COMMISSIONERS
OF TORRANCE COUNTY, NEW MEXICO**



Jim Frost

Jim Frost, District 1

Tito Chavez

Paul M. (Tito) Chavez, District 2

Chester Riley Jr.

Chester Riley Jr., District 3

ATTEST:

Linda Jaramillo

Linda Jaramillo
County Clerk