

**BERNALILLO COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**ORDINANCE NO. 2012-19**

**Amendment of Section 82-4 - Vehicle Seizure and Forfeiture Ordinance**

(a) *Findings of fact.* The board of county commissioners finds that:

- (1) The problems caused by those in the county who drive while under the influence of intoxicating liquor or drugs (DWI) are substantial. Among the problems caused by this type of unlawful activity are the potential for serious bodily injury and loss of life to the innocent citizens who are present upon public roads in the unincorporated area of the county.
- (2) Those who drive under the influence of intoxicating liquor or drugs are likely to cause considerable property damage while driving.
- (3) To allow those who are arrested for a second or subsequent offense of DWI, or have had their license suspended or revoked as a result of an arrest or conviction for DWI, access to motor vehicles increases the likelihood that such persons will repeat the offense.
- (4) Motor vehicles which are used by drivers who are arrested for a second or subsequent offense of DWI and/or whose driving privileges have been revoked as a result of an arrest or conviction for DWI constitute a nuisance to the general public and are dangerous to the general health and safety of the general public.

(b) *Purpose of section.* It is the purpose of this section to protect the health and safety of the citizens of the unincorporated areas of the county by abating such motor vehicle nuisances.

(c) *Vehicles declared nuisances; forfeiture.* Any motor vehicle operated by a person who is arrested for a second or greater DWI or for driving on a revoked driver's license as a result of an arrest or conviction for DWI, is hereby declared to be a nuisance and subject to forfeiture pursuant to the provisions of this section.

(d) *Administration of section.* The county sheriff's department shall be responsible for administration of this section. Reasonable rules and regulations may be prescribed by the county manager or his designee with the approval of the board of county commissioners to carry out the intent and purpose of this section pursuant to the standards created by this section.

(e) *Seizure and forfeiture proceedings.*

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1 (1) Motor vehicles subject to forfeiture under this section may be seized by any  
2 Bernalillo County Sheriff's deputy upon an order issued by the district court.

3  
4 (2) Seizure without such an order may be made if seizure is incident to an arrest of  
5 the driver of the vehicle for DWI and the driver has a previous conviction for DWI, or for  
6 driving with a revoked license that was the result of a DWI conviction or arrest.

7  
8 (3) A vehicle seized under this section shall not be subject to replevin, but is deemed  
9 to be in the custody of the Bernalillo County Sheriff's department seizing it, subject only  
10 to the orders and decrees of the district court. The Sheriff's department may take custody  
11 of the vehicle and remove it to an appropriate and official location within the district  
12 court's jurisdiction for disposition in accordance with this section.

13  
14 (4) Any sworn law enforcement officer lawfully deputized by the Sheriff of  
15 Bernalillo County may take possession of a motor vehicle pursuant to this article.  
16 Immediately after a vehicle is towed for forfeiture pursuant to e(2), the arresting Sheriff's  
17 deputy will serve a copy of the Notice of Vehicle Seizure to the individual whom the  
18 vehicle was seized from at the time of the arrest. A copy of the Notice of Vehicle Seizure  
19 will be mailed postage pre-paid to the lawfully registered owner and any lien holder of  
20 record. Ownership and any liens will be determined on the date of the seizure via New  
21 Mexico Motor Vehicle Division records. The notice shall contain the following  
22 information:

- 23  
24 a. The license plate number, make, type and color of vehicle;
- 25  
26 b. The location where the vehicle was seized;
- 27  
28 c. A statement that the vehicle has been taken into custody and stored;
- 29  
30 d. The reason for the seizure;
- 31  
32 e. A name and phone number or title of a county employee from whom the  
33 owner can obtain further information;
- 34  
35 f. A statement that daily storage charges will be assessed in addition to a towing  
36 charge;
- 37  
38 g. A statement that the owner has the right to contest the validity of the  
39 impoundment by requesting a hearing in writing within 10 calendar days of  
40 the mailing of the Notice of Vehicle Seizure;
- 41  
42 h. A copy of Section 82-4, et seq.

1 (5) Hearing. The lawfully registered owner of the vehicle may request an  
2 administrative hearing to be conducted by a hearing officer authorized by the county  
3 manager and the Sheriff. The hearing, if requested within the period set forth above,  
4 shall be held within 20 business days (excluding weekends and holidays) of receipt of the  
5 request. A scheduled hearing may be continued to a later date by agreement of the  
6 parties subject to approval by the authorized hearing officer, or by sua sponte order of the  
7 hearing officer.

- 8
- 9 a. The hearing shall be informal and governed by the rules of administrative  
10 hearings.
- 11
- 12 b. The hearing officer shall only determine whether the law enforcement officer  
13 had probable cause to seize the vehicle. The hearing officer shall mail written  
14 notice of the decision to the owner within five business days of the hearing.
- 15
- 16 c. If the hearing officer finds that the law enforcement officer did not have  
17 probable cause to seize the vehicle in question or that the vehicle in question  
18 should otherwise be released in accordance with this ordinance, the hearing  
19 officer shall issue and date a Certificate of Release, a copy of which shall be  
20 given to the owner of the vehicle. Upon a showing of the owner's copy of the  
21 certificate, the county shall release the vehicle to its owner or the owner's  
22 legal agent and storage fees shall be waived. The owner will be responsible  
23 for towing fees incurred by the county as a result of the driver's arrest. If the  
24 owner fails to present such certificate to the county employee having custody  
25 of the vehicle within 24 hours of its receipt, excluding days when the county  
26 seizure office is not open for business, the owner shall assume liability for all  
27 subsequent storage charges. The certificate shall advise the owner of such  
28 requirement.
- 29
- 30 d. If the hearing officer determines that the law enforcement officer had probable  
31 cause, and therefore, the vehicle was properly seized, proceedings for an order  
32 for forfeiture shall be instituted within a reasonable period of time.
- 33
- 34 e. In the event of a finding of probable cause, any person or entity who, pursuant  
35 to the records of the Motor Vehicle Division of the State Taxation and  
36 Revenue Department, has an ownership or security interest in the vehicle shall  
37 be served with notice of the forfeiture proceedings.
- 38

39 (6) When property is forfeited pursuant to this section the Bernalillo County Sheriff's  
40 department shall sell the motor vehicle at public auction and the proceeds shall be used to  
41 carry out the purpose and intent of this ordinance. If a vehicle is forfeited pursuant to this  
42 ordinance and the vehicle is not sold, the sheriff may employ such vehicle to be utilized  
43 by law enforcement for purposes that will serve the community, in this circumstance the  
44 vehicle shall only be used for DWI and/or drug prevention and education. Any proceeds  
45 from sold vehicles that exceed the costs of administering this ordinance shall be used for  
46 DWI enforcement, prevention, and education. The Bernalillo County Sheriff shall be

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1 responsible for maintaining and operating a seizure fund consistent with this provision.  
2 The DWI Advisory Board may make recommendations to the Sheriff for the utilization  
3 of funds.  
4

5 f. *Property interest not subject to forfeiture.* Notwithstanding subsection (e) of this section  
6 any forfeiture shall be subject to the owner or co-owner of a vehicle raising as a defense the  
7 interest of an innocent owner or secured party, when:

8  
9 (1) Any owner or co-owner may present evidence that he or she did not have knowledge  
10 of, nor consented to, the use of the vehicle by the driver who caused the vehicle to  
11 become seized. If such evidence is presented, the burden of proving knowledge and  
12 consent shall be upon the county. When the county can prove by a preponderance of the  
13 evidence that the owner or co-owner has actual or constructive knowledge that the  
14 individual arrested has been previously arrested or cited for DWI and/or driving on a  
15 revoked or suspended license in a vehicle that the owner owns, the owner or co-owner  
16 may not be considered an innocent owner. Constructive knowledge may include, but is  
17 not limited to, evidence of a previous arrest or citations in the vehicle, evidence of free  
18 access to the vehicle and evidence of knowledge of revoked or suspended license. Any  
19 owner or co-owner who is physically present inside the vehicle when the offender is  
20 arrested for DWI may not be considered an innocent owner.  
21

22 (2) Any secured party, to the extent of the security interest, if the secured party proves  
23 that the security interest was acquired in good faith with no knowledge or reason to  
24 believe that the vehicle would be used by a driver who would be arrested for DWI or by  
25 the driver whose license has been suspended or revoked and who did not have actual  
26 knowledge of a prior seizure of the vehicle. If the security interest is greater than the  
27 value of the vehicle, title shall be transferred to the secured party upon order of the  
28 district court. Any secured party acquiring an interest after the vehicle is in custody of the  
29 Sheriff's department shall have the burden of intervening in the forfeiture proceeding to  
30 protect such interest. Any interest in the vehicle must be properly filed with the New  
31 Mexico Motor Vehicle Division in accordance with sections 66-3-201 and 66-3-202  
32 NMSA 1978 before the date of incident leading to the seizure.  
33

34 (g) *Temporary Seizure Immobilization.* Notwithstanding any other provision of this  
35 ordinance, in the interest of public safety and health, the Sheriff's department may seize a  
36 vehicle at the time of an arrest of a person for DWI if that person only has one (1) previous  
37 conviction of record or has a current driver's license revocation and may offer the owner an  
38 opportunity to temporarily immobilize the vehicle. Such immobilization may be accomplished  
39 by an immobilization device (boot) at the owner's designated location within the county of  
40 Bernalillo, or by impoundment at a secure facility, in accordance with the procedures established  
41 by the Sheriff's department. The owner shall pay the Sheriff's department a fee for this  
42 voluntary, temporary seizure/immobilization and sign an immobilization agreement with the  
43 County of Bernalillo. Such temporary seizure/immobilization shall be imposed after the  
44 opportunity for a probable cause hearing as provided in this ordinance unless such hearing is  
45 waived in writing by the owner. Any immobilization period shall be consistent and based upon

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1 the number of DWI and/or driver's license revocation convictions as verified by the New Mexico  
2 Motor Vehicle Division.

3  
4 (h) *Severability Clause*. If any section, paragraph, sentence, clause, word or phrase of this  
5 section is for any reason held to be invalid or unenforceable by any court of competent  
6 jurisdiction, such decision shall not affect the validity of the remaining provisions of this section.  
7 The Bernalillo County Commissioners hereby declares that it would have passed this section and  
8 each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision  
9 being declared unconstitutional or otherwise invalid.

10

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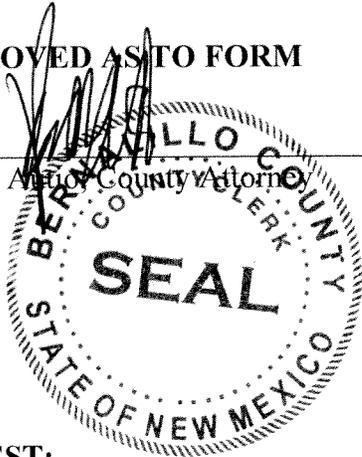
12  
13 DONE this 25 day of September, 2012.

14

15

16 APPROVED AS TO FORM

17  
18 Randy Aron, County Attorney



23 ATTEST:

24  
25  
26 Maggie Toulouse Oliver, County Clerk

BOARD OF COUNTY COMMISSIONERS

17  
18 Art De La Cruz, Chair

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20 Maggie Hart Stebbins, Vice Chair

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22 Simon A. Kubiak, Member

23  
24 Michael C. Wiener, Member

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26 Wayne A. Johnson, Member

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