

BERNALILLO COUNTY

BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. \_\_\_\_\_

1 [ENACTING AMENDMENTS TO THE VEHICLE SEIZURE AND FORFEITURE  
2 ORDINANCE]

3 IT IS HEREBY ORDAINED THAT; The Board of County Commissioners hereby amends the Vehicle  
4 Seizure and Forfeiture Ordinance, Section 82-4 et. Seq. as follows: The highlighted sections are amended to  
5 read as underlined or stricken.

6 Sec. 82-4. Vehicle seizure and forfeiture ordinance. 

7 (a)

8 *Findings of fact.* The board of county commissioners finds that:

9 (1)

10 The problems caused by those in the county who drive while under the  
11 influence of intoxicating liquor or drugs (DWI) (in violation of NMSA 1978, §  
12 66-8-102, or its successor statute) are substantial. Among the problems  
13 caused by this type of unlawful activity are the potential for serious bodily  
14 injury and loss of life to the innocent citizens who are present upon public  
15 roads in the unincorporated area of the county.

16 (2)

17 Those who drive under the influence of intoxicating liquor or drugs are likely  
18 to cause considerable property damage while driving.

19 (3)

20 To allow those who are arrested for a second or subsequent offense of DWI  
21 (in violation of NMSA 1978, § 66-8-102, or its successor statute), or have had  
22 their license suspended or revoked as a result of ~~a~~ prior arrest or conviction  
23 for DWI (in violation of NMSA 1978, § 66-5-39, or its successor statute)  
24 access to motor vehicles, increases the likelihood that such persons will  
25 repeat the offense.

26 (4)

27 Motor vehicles which are used by drivers who are arrested for a second or  
28 subsequent offense of DWI and/or whose driving privileges have been  
29 revoked as a result of a prior arrest or conviction for DWI, constitute a  
30 nuisance to the general public and are dangerous to the ~~general~~ health and  
31 safety of the general public.

32 (5)

33 Streets within unincorporated areas of the county have been the site of  
34 continuing and escalating illegal motor vehicle speed contests known as

1 street racing and/or drag racing. Illegal street racers cause conditions that  
2 result in unsafe traffic conditions for other vehicles, pedestrians, bicyclists,  
3 and playing children. The use of a motor vehicle to engage in racing or drag-  
4 racing (in violation of NMSA 1978, § 66-8-115, or its successor statute), or  
5 reckless driving (in violation of NMSA 1978 § 66-8-113, or its successor  
6 statute) upon streets within the unincorporated areas of the county, further  
7 prevent the full and peaceful enjoyment of the use of property of county  
8 residents and business owners and otherwise negatively impact the health,  
9 safety, and welfare of the community. The vehicles used in these illegal  
10 activities are therefore public nuisances.

11 (b)

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

15 (c)

16 *Vehicles declared nuisances; forfeiture.*

17 Any motor vehicle operated by a person who is arrested for a second or greater DWI  
18 or for driving on a revoked driver's license as a result of a prior arrest or conviction  
19 for DWI, or for engaging in or otherwise participating in a drag race or race for  
20 speed, or for driving recklessly within the unincorporated areas of the county, is  
21 hereby declared to be a public nuisance justifying the need for firm action to abate  
22 the public nuisance and is therefore subject to forfeiture pursuant to the provisions of  
23 this section.

24 (d)

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

30 (e)

31 *Seizure and forfeiture proceedings.*

32 (1)

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

35 (2)

36 Seizure without such an order may be made if seizure is incident to an arrest  
37 of the driver of the vehicle for DWI (in violation of NMSA 1978, § 66-8-102, or  
38 its successor statute) and the driver has a previous conviction for DWI, or for  
39 driving with a revoked license that was the result of a prior DWI conviction or  
40 arrest (in violation of NMSA 1978, § 66-5-39, or its successor statute), or for

1 engaging in or otherwise participating in a drag race or race for speed (in  
2 violation of NMSA 1978, § 66-8-115, or its successor statute), or for reckless  
3 driving (in violation of NMSA 1978 § 66-8-113, or its successor statute).

4 (3)

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

11 (4)

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

22 a.

23 The license plate number, make, type and color of vehicle;

24 b.

25 The location where the vehicle was seized;

26 c.

27 A statement that the vehicle has been taken into custody and stored;

28 d.

29 The reason for the seizure;

30 e.

31 A name and phone number or title of a county employee from whom  
32 the owner can obtain further information;

33 f.

34 A statement that daily storage charges will be assessed in addition to  
35 a towing charge;

36 g.

37 A statement that the owner has the right to contest the validity of the  
38 impoundment by requesting a hearing in writing within ten calendar  
39 days of the mailing of the notice of vehicle seizure;

40 h.

1 A copy of Section 82-4, et seq.

2 (5)

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

10  
11 a.

12 The hearing shall be informal and governed by the rules of  
13 administrative hearings.

14 b.

15 The hearing officer shall only determine whether the law enforcement  
16 officer had probable cause to ~~seize the vehicle~~make the arrest  
17 justifying the seizure of the vehicle in question. The hearing officer  
18 shall mail written notice of the decision to the owner within five  
19 business days of the hearing.

20 c.

21 If the hearing officer finds that the law enforcement officer did not  
22 have probable cause to seize the vehicle in question or that the  
23 vehicle in question should otherwise be released in accordance with  
24 this ordinance, the hearing officer shall issue and date a certificate of  
25 release, a copy of which shall be given to the owner of the vehicle.  
26 Upon a showing of the owner's copy of the certificate, the county  
27 shall release the vehicle to its owner or the owner's legal agent and  
28 storage fees shall be waived. The owner will be responsible for  
29 towing fees incurred by the county as a result of the driver's arrest. If  
30 the owner fails to present such certificate to the county employee  
31 having custody of the vehicle within 24 hours of its receipt, excluding  
32 days when the county seizure office is not open for business, the  
33 owner shall assume liability for all subsequent storage charges. The  
34 certificate shall advise the owner of such requirement.

35 d.

36 If the hearing officer determines that the law enforcement officer had  
37 probable cause, and therefore, the vehicle was properly seized,  
38 proceedings for an order for forfeiture shall be instituted within a  
39 reasonable period of time.

40 e.

1 In the event of a finding of probable cause, any person or entity who,  
2 pursuant to the records of the Motor Vehicle Division of the State  
3 Taxation and Revenue Department, has an ownership or security  
4 interest in the vehicle shall be served with notice of the forfeiture  
5 proceedings.

6 (6)

7 When property is forfeited pursuant to this section the Bernalillo County  
8 Sheriff's department shall sell the motor vehicle at public auction and the  
9 proceeds shall be used to carry out the purpose and intent of this ordinance.  
10 If a vehicle is forfeited pursuant to this ordinance and the vehicle is not sold,  
11 the sheriff may employ such vehicle to be utilized by law enforcement for  
12 purposes that will serve the community, in this circumstance the vehicle shall  
13 only be used for DWI and/or drug prevention and education and/or general  
14 traffic safety enforcement/accident prevention and education. Any proceeds  
15 from sold vehicles that exceed the costs of administering this ordinance shall  
16 be used for DWI enforcement, prevention, and education and/or drug  
17 enforcement, prevention and education and/or general traffic safety  
18 enforcement /accident prevention and education. The Bernalillo County  
19 Sheriff shall be responsible for maintaining and operating a seizure fund  
20 consistent with this provision. The DWI advisory board may make  
21 recommendations to the Sheriff for the utilization of funds.

22 a.

23 Any vehicle not recovered by the owner within 30 days after being  
24 Notified by the Sheriff's department that such vehicle has been  
25 released by the Sheriff's department shall be deemed abandoned  
26 and disposed of in accordance with the notice provisions of NMSA  
27 1978, § 29-1-14 (or its successor statute).

28 (f)

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

32 (1)

33 Any owner or co-owner of the vehicle who did not have knowledge of, nor  
34 consented to, the use of the vehicle by the driver who caused the vehicle to  
35 become a nuisance, provided that upon establishment of a prima facie case  
36 of lack of knowledge or consent by the owner or co-owner, the burden of  
37 proving knowledge and consent shall be upon the county;

38 ~~Any owner or co-owner may present evidence that he or she did not have~~  
39 ~~knowledge of, nor consented to, the use of the vehicle by the driver who~~  
40 ~~caused the vehicle to become seized. If such evidence is presented, the~~

~~burden of proving knowledge and consent shall be upon the county.~~ When the county can prove by a preponderance of the evidence that the owner or co-owner has actual or constructive knowledge that the individual arrested has been previously arrested or cited for DWI and/or driving on a revoked or suspended license or for engaging in or otherwise participating in a drag race or race for speed (in violation of NMSA 1978, § 66-8-115, or its successor statute), or for reckless driving (in violation of NMSA 1978 § 66-8-113, or its successor statute) in a vehicle that the owner owns, the owner or co-owner may not be considered an innocent owner. Constructive knowledge may include, but is not limited to, evidence of a previous arrest or citations in the vehicle, evidence of free access to the vehicle and evidence of knowledge of revoked or suspended license. Any owner or co-owner who is physically present inside the vehicle when the offender is arrested for ~~DWI~~ the offense of a second or subsequent DWI (in violation of NMSA 1978, § 66-8-102, or its successor statute) or for driving with a revoked license that was the result of a prior DWI conviction or arrest (in violation of NMSA 1978, § 66-5-39, or its successor statute), or for engaging in or otherwise participating in a drag race or race for speed (in violation of NMSA 1978, § 66-8-115, or its successor statute), or for reckless driving (in violation of NMSA 1978 § 66-8-113, or its successor statute), -may not be considered an innocent owner.

(2)

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 a driver who would be arrested for DWI or by the driver whose license has been suspended or revoked and who did not have actual knowledge of a prior seizure of the vehicle. If the security interest is greater than the value of the vehicle, title shall be transferred to the secured party upon order of the district court. Any secured party acquiring an interest after the vehicle is in custody of the sheriff's department shall have the burden of intervening in the forfeiture proceeding to protect such interest. Any interest in the vehicle must be properly filed with the New Mexico Motor Vehicle Division in accordance with sections 66-3-201 and 66-3-202 NMSA 1978 (or their successor statutes) before the date of incident leading to the seizure.

(g)

*Temporary seizure immobilization.* Notwithstanding any other provision of this ordinance, in the interest of public safety and health, the Sheriff's department ~~may seize a vehicle at the time of an arrest of a person for DWI if that person only has one (1) previous conviction of record or has a current driver's license revocation and~~ may offer the owner of a motor vehicle seized pursuant to this ordinance, an opportunity to temporarily immobilize the vehicle. Such immobilization may be

1 accomplished by an immobilization device (boot) at the owner's designated location  
2 within the county of Bernalillo, or by impoundment at a secure facility, in accordance  
3 with the procedures established by the Sheriff's department. The owner shall pay the  
4 Sheriff's department a fee for this voluntary, temporary seizure/immobilization and  
5 sign an immobilization agreement with the County of Bernalillo. Such temporary  
6 seizure/immobilization shall be imposed after the opportunity for a probable cause  
7 hearing as provided in this ordinance unless such hearing is waived in writing by the  
8 owner. Any immobilization period shall be consistent and based upon the number of  
9 DWI and/or driver's license revocation convictions and/or Drag-racing/Reckless  
10 Driving convictions, as verified by the New Mexico Motor Vehicle Division.

11 (h)

12 Release of motor vehicle to lienholder. Notwithstanding any other provision of this  
13 ordinance, the Sheriff's department may enter into an agreement to release a seized  
14 vehicle to the lienholder upon the following terms and conditions:

15 (1) all individual owners/claimants disclaim all interests in the subject vehicle, or are  
16 defaulted in this cause of action, or the district court grants forfeiture;

17 (2) the lienholder provides proof of a valid lien registered with the New Mexico Motor  
18 Vehicle Division, and has submitted an affidavit of repossession to the Sheriff's  
19 department;

20 (3) the lienholder pays a fee, set by the board of county commissioners, for the costs  
21 associated with the seizure and storage of the subject vehicle;

22 (4) the lienholder acknowledges that the subject vehicle was seized because it was  
23 operated by a person who is arrested for the offense of a second or subsequent DWI  
24 (in violation of NMSA 1978, § 66-8-102, or its successor statute) or for driving with a  
25 revoked license that was the result of a prior DWI conviction or arrest (in violation of  
26 NMSA 1978, § 66-5-39, or its successor statute), or for engaging in or otherwise  
27 participating in a drag race or race for speed (in violation of NMSA 1978, § 66-8-115,  
28 or its successor statute), or for reckless driving (in violation of NMSA 1978 § 66-8-  
29 113, or its successor statute);

30 (5) the lienholder agrees to relinquish any claim to the to the subject vehicle and to  
31 transfer all claims and rights lienholder has in the vehicle to the Sheriff's department  
32 if the same person who was operating the vehicle when it was seized, is again  
33 arrested and charged with a second or subsequent DWI (in violation of NMSA 1978,  
34 § 66-8-102, or its successor statute), or for driving with a revoked license that was  
35 the result of a prior DWI conviction or arrest (in violation of NMSA 1978, § 66-5-39, or  
36 its successor statute), or for engaging in or otherwise participating in a drag race or  
37 race for speed (in violation of NMSA 1978, § 66-8-115, or its successor statute), or  
38 for reckless driving (in violation of NMSA 1978 § 66-8-113, or its successor statute);

39 (6) the lienholder agrees to waive any future innocent owner defense if the same  
40 person who was operating the vehicle when it was seized is again arrested and

1 charged with a second or subsequent DWI (in violation of NMSA 1978, § 66-8-102,  
2 or its successor statute), -or for driving with a revoked license that was the result of a  
3 prior DWI conviction or arrest (in violation of NMSA 1978, § 66-5-39, or its successor  
4 statute), or for engaging in or otherwise participating in a drag race or race for speed  
5 (in violation of NMSA 1978, § 66-8-115, or its successor statute), or for reckless  
6 driving (in violation of NMSA 1978 § 66-8-113, or its successor statute) while  
7 operating the subject vehicle;  
8 (7) the lienholder agrees to accept the subject vehicle in its current condition, and to  
9 wave all claims, known or unknown, against Bernalillo County and its Sheriff's  
10 department.

11 (i)

12 *Severability clause.* If any section, paragraph, sentence, clause, word or phrase of  
13 this section is for any reason held to be invalid or unenforceable by any court of  
14 competent jurisdiction, such decision shall not affect the validity of the remaining  
15 provisions of this section. The Bernalillo County Commissioners hereby declares that  
16 it would have passed this section and each section, paragraph, sentence, clause,  
17 word or phrase thereof irrespective of any provision being declared unconstitutional  
18 or otherwise invalid.

19 (Ord. No. 92-15, §§ 1—5, 11-17-92; Ord. No. 2012-19, 9-25-12)

20  
21  
22 **DONE** this \_\_\_\_ day of \_\_\_\_\_, 2015.  
23

24 **APPROVED AS TO FORM**

**BOARD OF COUNTY COMMISSIONERS**

25 \_\_\_\_\_  
26 Randy Autio, County Attorney

\_\_\_\_\_

27 \_\_\_\_\_  
28 Art De La Cruz, Vice Chair

29 \_\_\_\_\_  
30 Debbie O'Malley, Member

31 **ATTEST:**

32 \_\_\_\_\_  
Lonnie C. Talbert, Member

33 \_\_\_\_\_  
34 Maggie Toulouse Oliver, County Clerk  
35

\_\_\_\_\_

Wayne A. Johnson, Member  
36