

# SANTA FE COUNTY

## *Ordinance No. 2006-5*

---

**AN ORDINANCE DECLARING DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS TO BE A PUBLIC HEALTH DANGER AND PROVIDING FOR THE TEMPORARY SEIZURE, IMMOBILIZATION, AND FORFEITURE OF A VEHICLE FOLLOWING THE THIRD OFFENSE OF DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS**

---

The Santa Fe Board of County Commissioners **ORDAINS AND ADOPTS** the following:

### **I. VEHICLE NUISANCE**

A motor vehicle is hereby declared to be a nuisance and subject to forfeiture pursuant to the provisions of this Ordinance if it is:

A. Operated in the unincorporated areas of the County by a person who has been convicted of two prior driving while intoxicated offenses and is arrested for a third or subsequent offense of driving under the influence of intoxicating liquor or drugs, or

B. Operated in the unincorporated areas of the County by a person whose license is revoked as a result of one or more convictions for driving while intoxicated or revoked as a result of a driving while intoxicated arrest.

### **II. VEHICLES SUBJECT TO FORFEITURE**

Except as otherwise provided herein, any motor vehicle which has been declared a vehicle nuisance as defined above shall be subject to temporary seizure or permanent forfeiture.

### **III. SEIZURE; FORFEITURE PROCEEDING**

A. Motor vehicles subject to forfeiture under this Ordinance may be temporarily seized by the Sheriff or any deputy Sheriff of the County.

B. Temporary seizure may be made if it is incident to an arrest of the driver of the vehicle for either driving while intoxicated (third offense, two prior convictions) or driving while his or her license is revoked as a result of a driving while intoxicated arrest.

SEC CLERK RECORDED 04/26/2006

SFC CLERK RECORDED 04/26/2006

C. A vehicle temporarily seized under this Ordinance shall not be subject to replevin, but is deemed to be in the custody of the Sheriff or Deputy Sheriff seizing it subject only to the orders and decrees of the district court. The Sheriff or Deputy Sheriff may take custody of the vehicle and remove it to an appropriate and official location within the district court's jurisdiction for disposition in accordance with this Ordinance. The Sheriff shall establish reasonable towing and storage fees for vehicles temporarily seized in accordance with this Ordinance.

D. Immediately after a vehicle is temporarily seized as provided above, the Sheriff or arresting Deputy shall serve a copy of the Notice of Forfeiture upon the individual from whom the vehicle was seized at the time of arrest. A copy of the Notice of Forfeiture will be mailed postage prepaid to the lawfully registered owner as verified by the New Mexico Motor Vehicle Division. The notice shall include the following:

1. The license plate number, make, type and color of the vehicle;
2. The location from which the vehicle was temporarily seized;
3. A statement that the vehicle has been taken into custody and stored;
4. The reason for temporary seizure;
5. A name, phone number and title of the county employee from whom the owner can obtain further information;
6. A statement that daily storage charges will be assessed in addition to a towing charge;
7. A statement that the owner has the right to contest the validity of the impoundment by requesting a hearing in writing within ten (10) business days of the date of mailing of the Notice of Forfeiture; and
8. A copy of this Ordinance.

E. The owner may request that a hearing be scheduled before a county hearing officer, appointed by the County Manager. The hearing shall be held within ten (10) business days of receipt of the request unless the hearing is continued with agreement of the parties. The hearing shall be informal and not bound by the technical rules of evidence. The county hearing officer shall only determine whether the law enforcement officer had probable cause to seize the vehicle. The county hearing officer shall mail written notice of his or her decision to the owner within two (2) working days of the hearing. If the county hearing officer finds that the law enforcement officer did not have probable cause to seize the vehicle in question or that the vehicle should otherwise be released, he or she shall issue and date a Certificate of Release, a copy of which shall be given to the owner of the vehicle. 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 shall be waived. If the owner fails to present such certificate to the county employee having custody of the vehicle within twenty-four (24) hours of its receipt, excluding days when the DWI Forfeiture Office is not open for business, the owner shall assume liability for all subsequent storage charges. The certificate shall advise the owner of such requirement. If the county hearing officer determines that the vehicle was properly seized, proceedings for an order for forfeiture from the District Court shall be instituted promptly.

SHERIFF CLERK RECORDED 04/26/2006

F. Any person who, pursuant to the records of the Motor Vehicle Division of the State Taxation and Revenue Department, has an ownership or security interest in the subject matter vehicle shall be served with notice of the forfeiture proceedings.

G. When property is forfeited pursuant to this Ordinance, the Sheriff shall sell the motor vehicle, and the proceeds shall be used to carry out the purpose and intent of this Ordinance. Any proceeds that exceed the costs of administering this Ordinance shall be used for DWI enforcement, prevention and education. Any vehicle not recovered by the owner within thirty (30) days after being notified by the County 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 abandoned vehicles seized pursuant to this Ordinance shall be used to carry out the purpose and intent of this Ordinance.

H. A hearing fee of \$100 shall accompany each request for hearing with the county hearing officer made pursuant to this section.

**IV. VOLUNTARY SEIZURE/IMMOBILIZATION**

Notwithstanding any other provision of this Ordinance, in the interest of public safety and health, the Sheriff may seize a vehicle at the time of an arrest of a person for driving under the influence of intoxicating liquor or drugs or, if that person only has one (1) previous conviction of record, and may offer the owner an opportunity to voluntarily request the alternative of (i) immobilization of the vehicle for a period of thirty (30) days and/or (ii) installation, at the owner's expense, of an ignition interlock device for a period of one (1) year. If the owner elects to accept an offered alternative(s), the owner shall agree to the voluntary seizure/immobilization and/or installation of the ignition interlock device in writing, on a form provided by the County. Such immobilization may be accomplished by an Immobilization Device (Boot) at the owner's designated location within the County of Santa Fe, or by impoundment at a secure facility, in accordance with procedures established by the Sheriff. The owner shall pay the Sheriff a fee for any such voluntary, temporary seizure/immobilization and sign an Immobilization and/or Ignition Interlock Agreement with the County of Santa Fe.

**V. PROPERTY INTEREST NOT SUBJECT TO FORFEITURE**

Notwithstanding the provisions above, any forfeiture shall be subject to the interest of:

A. Any owner or co-owner of the vehicle who did not have knowledge of, nor consented to, the use of the vehicle by the driver who caused the vehicle to become a nuisance, provided that upon establishment of a prima facie case of lack of knowledge or consent by the owner or co-owner, 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 establishes the security interest was acquired in good faith with no knowledge or reason to believe that the vehicle would be used by the driver arrested on whose license has been revoked. If the security interest is greater than the value of the vehicle, title shall be transferred to the secured party upon approval of the district court. Any secured party acquiring an interest after the vehicle is in

SFC CLERK RECORDED 04/26/2006

the custody of the Sheriff 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 Department in accordance with Sections 66-3-201 and 66-3-202 NMSA 1978 before the date of incident leading to the seizure.

**VI. SEVERABILITY CLAUSE**

If any section, paragraph, word or phrase of this Ordinance is for any reason 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 Commission hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

**VII. EFFECTIVE DATE**

This Ordinance shall take effect July 1, 2006.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF SANTA FE COUNTY, NEW MEXICO:**

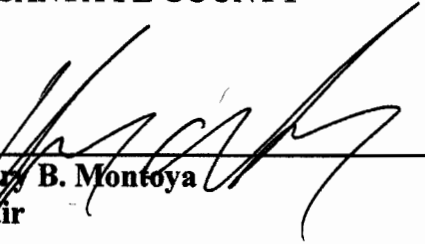
The Ordinance declaring driving under the influence of intoxicating liquor or forfeiture or drugs to be a public health danger and providing for the temporary seizure, immobilization of a vehicle following the third offense of driving under the influence of intoxicating liquor or drugs or driving on a revoked license as a result of driving under the influence of intoxicating liquor or drugs is hereby

**PASSED, APPROVED, SIGNED AND ADOPTED THIS 25 DAY OF APRIL, 2006 BY THE BOARD OF COUNTY COMMISSIONERS.**


[Remainder of page intentionally left blank]

SFC CLERK RECORDED 04/26/2006

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY


  
\_\_\_\_\_  
Harry B. Montoya  
Chair

Attest:

  
\_\_\_\_\_  
Valerie Espinoza  
County Clerk




Approved as to form:

  
\_\_\_\_\_  
Stephen C. Ross  
County Attorney



COUNTY OF SANTA FE ) BCC ORDINANCE  
STATE OF NEW MEXICO ) ss PAGES: 5

I Hereby Certify That This Instrument Was Filed for  
Record On The 26TH Day Of April, A D., 2006 at 14:32  
And Was Duly Recorded as Instrument # 1430450  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Valerie Espinoza  
Deputy  County Clerk, Santa Fe, NM