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1 (D) Persons who wish to communicate with a prostitute, or a person a  
2 reasonably objective person would conclude may be a prostitute, for non-  
3 criminal purposes shall not do so from a motor vehicle. The City Council finds  
4 that this ordinance is a reasonable prohibition of only one manner of  
5 communication, does not sever all reasonable alternatives for communication  
6 and leaves open alternative channels of communication.

7 Section 3. DEFINITIONS.

8 For the purpose of this ordinance, the following definitions shall apply  
9 unless the context clearly indicates or requires a different meaning.

10 DEPARTMENT. The Albuquerque Police Department.

11 DRIVER. The person operating a Motor Vehicle at the time of a violation.

12 INFRACTION. A civil violation of this ordinance.

13 KNOWN PROSTITUTE. A person who, within one year preceding the date a  
14 police officer determines there is probable cause to believe that a Motor  
15 Vehicle is being used to facilitate a Prostitution Crime, is known to the police  
16 officer to have been convicted for prostitution as that term is defined by State  
17 law or Section 11-4-2 of this code of ordinances.

18 MAYOR. The Mayor of the City of Albuquerque or any person with  
19 authority from the Mayor to enforce this ordinance. The term includes,  
20 without limitation, the Mayor's agents under § 1-1-98(B)(2)(a), and any city  
21 employee authorized by law to commence a criminal action in the Metropolitan  
22 Court.

23 MOTOR VEHICLE. The term shall have the same meaning as used  
24 elsewhere in State law and this code of ordinances.

25 NUISANCE. The act of operating a Motor Vehicle in violation of this article.

26 POLICE OFFICER. A sworn member of the Albuquerque Police  
27 Department, the Bernalillo County Sheriff's Office, the New Mexico State  
28 Police or any other public official with authority to stop a Motor Vehicle for a  
29 violation of law in Albuquerque.

30 PROSTITUTION CRIME. Any violation of the Criminal Solicitation  
31 Ordinance, §§ 11-4-1 et seq. ROA 1994, or the following New Mexico Statutes:  
32 § 30-9-2 (prostitution), § 30-9-3 (patronizing prostitutes) § 30-9-4 (promoting

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1 prostitution) or § 30-9-4.1 (accepting earnings of a prostitute), as amended  
2 from time to time.

3 REGISTERED OWNER. The Registered Owner or Registered Owners of a  
4 Motor Vehicle according to the license plate number or information obtained  
5 from the Department of Motor Vehicles, from similar Motor Vehicle agencies  
6 outside New Mexico, from information obtained from the Metropolitan Court,  
7 from Department records, or from any other source or documentation or  
8 methods reasonably relied upon by Police Officers.

9 UNDERCOVER POLICE OFFICER. A police officer posing as a person  
10 involved or soliciting involvement in a Prostitution Crime.

11 Section 4. INFRACTION.

12 (A) It shall be an Infraction under this ordinance to use a Motor Vehicle  
13 to facilitate a Prostitution Crime.

14 (B) A conviction for the Prostitution Crime does not have to occur  
15 before this ordinance applies. This is a civil remedial ordinance not dependent  
16 upon a criminal conviction predicate.

17 (C) An Infraction has occurred when a Police Officer observes a nexus  
18 between a Motor Vehicle and a Known Prostitute or Undercover Police Officer  
19 and a reasonably objective police officer would conclude that a Motor Vehicle  
20 is being used to facilitate a Prostitution Crime.

21 (D) An Infraction has not occurred unless the Driver is arrested for a  
22 Prostitution Crime.

23 Section 5. SEIZURE AND FORFEITURE.

24 Except as otherwise provided herein, any Motor Vehicle used to facilitate a  
25 Prostitution Crime shall be subject to temporary seizure and possible  
26 permanent forfeiture.

27 (A) Motor Vehicles subject to forfeiture under this article may be seized  
28 and sold or disposed of by any Police Officer upon an order issued by the  
29 district court.

30 (B) Seizure without such an order may be made if seizure is incident to  
31 an arrest of the Driver of the Motor Vehicle for a Prostitution Crime.

32 (C) A Motor Vehicle seized under this article shall not be subject to  
33 replevin, but is deemed to be in the custody of the Department subject only to

1 the orders and decrees of the district court. The Police Officer may take  
2 custody of the Motor Vehicle and have it towed to an appropriate and official  
3 location within the district court's jurisdiction for disposition in accordance  
4 with this article.

5 (D) Immediately after a Motor Vehicle is towed for seizure or forfeiture  
6 hereunder, the Police Officer shall serve a copy of a Notice of Forfeiture to the  
7 individual whom the Motor Vehicle was seized from at the time of arrest. A  
8 copy of the Notice of Forfeiture will be mailed postage pre-paid to the  
9 Registered Owner as identified by the New Mexico Motor Vehicle Division to  
10 notify the Registered Owner of the pending proceedings. The notice shall be  
11 prepared by the City Attorney and shall include the following:

- 12 (1) The license plate number, make, type and color of the Motor  
13 Vehicle;
- 14 (2) The location the Motor Vehicle was seized from;
- 15 (3) A statement that the Motor Vehicle has been taken into  
16 custody and stored;
- 17 (4) The reason for seizure;
- 18 (5) The phone number of a municipal employee from whom the  
19 Registered Owner can obtain further information;
- 20 (6) A statement that storage charges will be assessed in addition  
21 to a towing charge;
- 22 (7) A statement that the Registered Owner has the right to contest  
23 the validity of the seizure and impoundment by requesting a hearing in writing  
24 within ten days of the date of mailing of the Notice of Forfeiture; and
- 25 (8) A copy of this ordinance.

26 (E) The Registered Owner may request an administrative hearing. A  
27 hearing fee of \$50.00 shall accompany each request for hearing. If a hearing is  
28 requested, the hearing shall be held within 20 working days (excluding  
29 weekends and holidays) of receipt of the request unless the hearing is  
30 continued upon the agreement of the parties. The hearing shall be informal  
31 and not bound by the technical rules of evidence and hearsay evidence.  
32 Police reports are admissible. An Undercover Police Officer may testify by  
33 telephone.

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1 (F) The hearing officer shall determine whether the Police Officer had  
2 probable cause to seize the Motor Vehicle under this ordinance. The hearing  
3 officer shall mail written notice of his decision to the Registered Owner within  
4 two working days of the hearing. The decision is subject to review under the  
5 rules of civil procedure. If the hearing officer finds that the Police Officer did  
6 not have probable cause to seize the Motor Vehicle in question or that the  
7 Motor Vehicle should otherwise be released, the hearing officer shall issue  
8 and date a certificate of release, a copy of which shall be given to the  
9 Registered Owner. Upon receipt of the Registered Owner's copy of such  
10 certificate, the city shall release the Motor Vehicle to the Registered Owner or  
11 the Registered Owner's agent, and storage fees shall be waived if the hearing  
12 officer found that the law enforcement officer did not have probable cause to  
13 seize the Motor Vehicle. If the Registered Owner fails to present such  
14 certificate to the municipal employee having custody of the Motor Vehicle  
15 within 24 hours of its receipt, excluding days when the DWI Forfeiture Office is  
16 not open for business, the Registered Owner shall assume liability for all  
17 subsequent storage charges. If the Registered Owner fails to present such  
18 certificate within thirty (30) of the order, the subject Motor Vehicle will be  
19 deemed abandoned in accordance with the notice provisions of § 29-1-14,  
20 NMSA 1978. The certificate shall advise the Registered Owner of such  
21 requirement. If the hearing officer determines that the Motor Vehicle was  
22 properly seized, proceedings for an order for forfeiture shall be instituted  
23 promptly in the district court.

24 (G) Any person or entity that, pursuant to the records of the Motor  
25 Vehicle Division of the State Taxation and Revenue Department, has a security  
26 interest in the Motor Vehicle shall be served with the notice of the forfeiture  
27 proceedings.

28 (H) When the Motor Vehicle is forfeited pursuant to this article, the  
29 Department shall sell the Motor Vehicle, and the proceeds shall be used to  
30 carry out the purpose and intent of this ordinance. If the Motor Vehicle is  
31 forfeited pursuant to this ordinance and the Motor Vehicle is not sold, the  
32 Police Department may employ such Motor Vehicle to be utilized by law  
33 enforcement for purposes that will serve the community. Any Motor Vehicle

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1 not recovered by the Registered Owner within 30 days after being notified by  
2 the city that such Motor Vehicle has been released by the city shall be deemed  
3 abandoned and disposed of in accordance with the notice provisions of  
4 Section 29-1-14, NMSA 1978. Any proceeds for the sale of abandoned Motor  
5 Vehicles seized pursuant to this ordinance shall be used to carry out the  
6 purpose and intent of this ordinance.

7 (l) The Department may seize a Motor Vehicle at the time of an arrest of  
8 a person and offer the Registered Owner an opportunity to temporarily  
9 immobilize the Motor Vehicle. Such immobilization may be accomplished by  
10 an Immobilization Device (Boot) at the Registered Owner's designated location  
11 within the City of Albuquerque, or by impoundment at a secure facility, in  
12 accordance with procedures established by the Department. The Registered  
13 Owner shall pay the Department a fee for this voluntary, temporary  
14 seizure/immobilization and sign an immobilization agreement with the City of  
15 Albuquerque. The City is not required to offer immobilization in any particular  
16 case and should not offer immobilization to repeat offenders. This paragraph  
17 is discretionary.

18 Section 6. INTERESTS NOT SUBJECT TO FORFEITURE.

19 (A) Any Registered Owner or co-Registered Owner may present  
20 evidence that he or she did not have knowledge of, nor consented to, the use  
21 of the Motor Vehicle by the driver who caused the Motor Vehicle to become  
22 seized. If such evidence is presented, the burden of proving knowledge and  
23 consent shall be upon the City. When the City can prove by a preponderance  
24 of the evidence that the Registered Owner or co-Registered Owner has actual  
25 or constructive knowledge that the individual arrested has been previously  
26 arrested for a Prostitution Crime, the Registered Owner or co-Registered  
27 Owner shall not be considered an innocent Registered Owner. Constructive  
28 knowledge may include, but is not limited to, evidence of a previous arrest for  
29 a similar offense in the Motor Vehicle or evidence of free access or exclusive  
30 control of the Motor Vehicle. Any Registered Owner or co-Registered Owner  
31 who is physically present inside the Motor Vehicle when the offender is  
32 arrested shall not be considered an innocent Registered Owner.

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1 (B) If a secured party proves that the security interest was acquired in  
2 good faith with no knowledge or reason to believe that the Motor Vehicle  
3 would be used by the driver to commit an Infraction hereunder and the  
4 security interest in greater than the value of the Motor Vehicle, title shall be  
5 transferred to the secured party upon motion to the district court. Any  
6 secured party acquiring an interest after the Motor Vehicle is in the custody of  
7 the Department shall have the burden of intervening in the forfeiture  
8 proceeding to protect such interest. Any interest in the Motor Vehicle must be  
9 properly filed with the New Mexico Motor Vehicle Department in accordance  
10 with Sections 66-3-201 and 66-3-202 NMSA 1978 before the date of incident  
11 leading to the seizure.

12 Section 7. ADMINISTRATION.

13 The Department shall be responsible for administration of this article.  
14 Reasonable rules and regulation may be prescribed by the Mayor or his  
15 designee to carry out the intent and purpose of this article pursuant to the  
16 standards created by this article.”

17 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence,  
18 clause, word or phrase of this ordinance is for any reason held to be invalid or  
19 unenforceable by any court of competent jurisdiction, such decision shall not  
20 affect the validity of the remaining provisions of this ordinance. The Council  
21 hereby declares that it would have passed this ordinance and each section,  
22 paragraph, sentence, clause, word or phrase thereof irrespective of any  
23 provision being declared unconstitutional or otherwise invalid.

24 SECTION 3. COMPILATION. This ordinance shall be incorporated in and  
25 made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

26 SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five days  
27 after publication by title and general summary.

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