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3 *See AO 98-160*
4 *as amended*
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Submitted by: Assemblymember Clementson
Prepared by: Department of Law
For reading:

6
7 ANCHORAGE, ALASKA
8 AO NO. 98-160(S)
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10 AN ORDINANCE AMENDING VARIOUS SECTIONS OF ANCHORAGE MUNICIPAL CODE
11 TITLES 8,14, AND 21 TO REQUIRE ANY UNLICENSED NIGHTCLUB IN ZONING
12 DISTRICTS B-2A CENTRAL BUSINESS DISTRICT CORE; B-2B CENTRAL BUSINESS
13 DISTRICT, INTERMEDIATE; B-2C CENTRAL BUSINESS DISTRICT, PERIPHERY; B-3
14 GENERAL BUSINESS DISTRICT; B-4 RURAL BUSINESS DISTRICT; I-1 LIGHT
15 INDUSTRIAL DISTRICT; T TRANSITION DISTRICT; AND MC MARINE COMMERCIAL
16 DISTRICT TO BE SEPARATED BY 300 FEET FROM SPECIFIED LAND USES, TO DEFINE
17 TERMS, ESTABLISH STANDARDS FOR UNLICENSED NIGHTCLUB LAND USES, AND TO
18 PROVIDE FOR CRIMINAL AND CIVIL PENALTIES FOR VIOLATIONS.
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21 THE ANCHORAGE ASSEMBLY FINDS:
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23 WHEREAS, certain types of enterprises have been determined to produce secondary
24 impacts on surrounding land uses;
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26 WHEREAS, the impacts include a perceived decline in property values and an increase in
27 the level of criminal activity, including unlawful sales and use of drugs and consumption of alcoholic
28 beverages, particularly, but not exclusively by underage individuals, in the vicinity of these types
29 of enterprises; and
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31 WHEREAS, segregating such enterprises from land uses that are likely to be negatively
32 impacted would improve the community;
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34 NOW THEREFORE THE ANCHORAGE ASSEMBLY ORDAINS:
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36 **Section 1:** That the Anchorage Municipal Code is hereby amended by adding a section, to be
37 numbered 8.30.130, which section reads as follows:
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39 **8.30.130 Unlawful operation of an unlicensed nightclub.**
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- 41 A. It is unlawful for any person intentionally to operate an unlicensed nightclub in violation of
42 AMC 21.45.245.
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44 B. It is prima facie evidence of intent to violate this subsection that the unlicensed nightclub

continues to operate in violation of AMC 21.45.245 after a person who operates such an unlicensed nightclub receives a citation pursuant to AMC 21.45.245 and AMC 14.60.030.

C. For purposes of this section, "to operate" means to:

1. direct or control the work force of an enterprise;
2. start or keep the enterprise working; or
3. have control or right of control over premises that are used with the knowledge of the person with control or right of control as an unlicensed nightclub and permitting the unlicensed nightclub to remain open without making an effort to prevent its remaining open.

D. Violation of this section shall, upon conviction, be punished by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both such fine and imprisonment.

Section 2: That section 14.60.030 of the Anchorage Municipal Code is hereby amended to read as follows:

14.60.030 **Fine schedule.**

The fine schedule under this chapter is as follows:

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|---------------------|--|---|---|---------------------|
| * | * | * | * | * |
| <i>Code Section</i> | <i>Offense</i> | | | <i>Penalty/Fine</i> |
| * | * | * | * | * |
| 21.45.245 | Operation of Unlicensed Nightclub in Violation of Zoning Requirements | | | \$300 |

Section 3: That section 21.35.020.B of the Anchorage Municipal Code is hereby amended to read as follows:

21.35.020 **Definitions and rules of construction.**

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B. The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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Nightclub, unlicensed means an enterprise, that, for consideration, provides entertainment to its patrons in the form of floorshows; dance revues; live, recorded, or electronically enhanced music; patron dancing; or performances by live or recorded professional or amateur entertainers, but does not offer or sell to its patrons either alcoholic beverages as defined by AS 04.21.080 or adult entertainment as defined by AMC 10.40.050. Teen clubs and cultural performance venues as set forth in AMC 10.55, discotheques, nightclubs, bars, lounges, dance halls, bistros, and any facility that meets the terms of this definition qualify as an unlicensed nightclub. The enterprises meeting this definition are often, but not exclusively, open during one or more of the hours between 10:00 p.m. and 7:00 a.m. This definition excludes theaters or auditoriums with fixed seating, religious facilities, adult-oriented establishments as defined by AMC 10.40.050, publicly owned and operated recreation centers or parks, and public and private schools.

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Section 4: That section 21.40.150 of the Anchorage Municipal Code is hereby amended to read as follows:

21.40.150 **B-2A central business district core.**

The following statement of intent and use regulations shall apply in the B-2A district:

- A. *Intent.* The B-2A district is intended to create a concentrated area of retail, financial, and public institutional facilities in order to encourage the development of interrelated uses and functions, reduce pedestrian walking distance between activities, and ensure the development of compatible pedestrian-oriented uses on the ground floor level throughout the district.
- B. *Permitted principal uses and structures.* Permitted principal uses and structures are

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as follows:

1 Principal uses permitted when visible from street level or occupying street level floorspace:

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dd. Unlicensed nightclub, provided such nightclub conforms to the requirements of section 21.45.245.

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Section 5: That section 21.40.160 of the Anchorage Municipal Code is hereby amended to read as follows:

21.40.160 B-2B central business district, intermediate.

The following statement of intent and use regulations shall apply in the B-2B district:

A. *Intent.* The B-2B district is intended to create financial, office and hotel areas surrounding the predominately retail and public institutional core of the central business district. The district also permits secondary retail and residential uses. The residential uses are intended to support other downtown activities.

B. *Permitted principal uses and structures.* Permitted principal uses and structures are as follows:

1. Retail uses:

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dd. Unlicensed nightclub, providing such nightclub conforms to the requirements of section 21.45.245.

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Section 6: That section 21.40.170 of the Anchorage Municipal Code is hereby amended to read as follows:

21.40.170 B-2C central business district, periphery.

The following statement of intent and use regulations shall apply to the B-2C district:

A. *Intent.* The B-2C district is intended to create financial, office, residential and hotel areas at the periphery of the central business district. The district also permits secondary retail uses. The height limitations in this district are intended to help preserve views and to conform structures to the geologic characteristics of the western and northern boundaries of the district.

B. *Permitted principal uses and structures.* Permitted principal uses and structures are as follows:

1 Retail uses:

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ee. Unlicensed nightclub, providing such nightclub conforms to the requirements of section 21.45.245.

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Section 7: That section 21.40.180 of the Anchorage Municipal Code is hereby amended to read as follows:

21.40.180 B-3 general business district.

The following statement of intent and use regulations shall apply to the B-3 district:

A. *Intent.* The B-3 district is intended for general commercial uses in areas exposed to heavy automobile traffic. The district specifically is intended for areas at or

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surrounding major arterial intersections where personal and administrative services, convenience and shopping goods, and automobile-related services are desirable and appropriate land uses. The extension of the B-3 district commercial uses along arterials, except as identified in the comprehensive development plan, is to be discouraged.

B. Permitted principal uses and structures. Permitted principal uses and structures are as follows:

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6. Unlicensed nightclub, provided such nightclub conforms to the requirements of section 21.45.245.

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Section 8: That section 21.40.190 of the Anchorage Municipal Code is hereby amended to read as follows:

21.40.190 B-4 rural business district.

The following statement of intent and use regulations shall apply to the B-4 district:

A. Intent. The B-4 district is intended to serve the needs of rural residential areas for commercial goods and services. The district is designed for areas around major arterial intersections where residential development may not be appropriate. The B-4 district is not intended as a strip commercial district.

B. Permitted principal uses and structures. Permitted principal uses and structures as follows:

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2. Commercial-retail uses:

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ddd. Unlicensed nightclub, providing such nightclub conforms to the requirements of section 21.45.245.

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Section 8: That section 21.40.200 of the Anchorage Municipal Code is hereby amended to read as follows:

21.40.200 I-1 light industrial district.

The following statement of intent and use regulations shall apply to the I-1 district:

A. *Intent.* The I-1 district is intended primarily for urban and suburban light manufacturing, processing, storage, wholesale [ING] and distribution operations, but also permits limited commercial uses. Regulations are intended to allow efficient use of the land while, at the same time, making the district attractive and compatible for a variety of uses.

B. *Permitted principal uses and structures.* Permitted principal uses and structures are as follows:

1. Commercial uses:

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ddd. Unlicensed nightclub, providing such nightclub conforms to the requirements of section 21.45.245.

Section 10: That section 21.40.240 of the Anchorage Municipal Code is hereby amended to read as follows:

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21.40.240 T transition district.

The following statement of intent and use regulations shall apply to the T district:

A. *Intent.* This district is intended to include suburban and rural areas that, because of location in relationship to other development, topography or soil conditions, are not developing and are not expected to develop in the immediate future along definitive land use lines. The permitted uses in these districts are intended to be as flexible as possible consistent with protection from noxious, injurious, hazardous or incompatible uses.

It is intended that interim development shall proceed in accordance with the applicable comprehensive development plan for the property being developed.

As development patterns start to emerge within these areas and the sophistication of their protection becomes more critical to the general public interest, it is anticipated that such lands within the T districts will be proposed for more restrictive zoning classifications.

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D. *Conditional uses.* Subject to the requirements of the conditional use standards and procedure of this title, the following uses may be permitted only as a conditional use:

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9. Unlicensed nightclub, providing such nightclub conforms to the requirements of section 21.45.245.

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Section 11: That section 21.40.270 of the Anchorage Municipal Code is hereby amended to read as follows:

21.40.270 MC marine commercial district.

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The following statement of intent and use regulations shall apply to the MC district:

A. *Intent.* The MC district is intended primarily for water-dependent and water-related use as permitted principal uses, with water-related uses being considered as conditional uses. Emphasis is on development flexibility of water-dependent and water-related commercial uses and on public access to the waterfront and Ship Creek.

* * * * *

D. *Conditional uses.* Subject to the requirements of the conditional use standards and procedures of sections 21.15.030 and 21.50.020, the following uses may be permitted:

1. Conditional uses with standards in section 21.50.290:

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k. Unlicensed nightclubs, providing such nightclub conforms to the requirements of section 21.45.245.

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Section 12: That the Anchorage Municipal Code is hereby amended by adding a section, to be numbered 21.45.245, which section reads as follows:

21.45.245 Standards -- Nightclub, unlicensed.

A. *Purpose.* Certain types of enterprises have been determined to produce secondary impacts on surrounding land uses. The impacts include a perceived decline in property values, and an increase in the level of criminal activity, including unlawful sales and use of drugs and consumption of alcoholic beverages, particularly, but not exclusively by, underage individuals, in the vicinity of these types of enterprises. The purpose of this section is to segregate such enterprises from land uses that are likely to be negatively impacted.

B. *Minimum distance from certain uses.* Unless the exemption described in subsection E applies, an unlicensed nightclub shall be located so that all portions of the lot on which the unlicensed nightclub is located shall be 300 feet or more from the lot line of property on which is located:

1. A public, private or parochial school;

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2. Property zoned residential;
3. R-11 zoned property designed as residential in the comprehensive plan;
4. Rooming houses;
5. Quasi-institutional houses;
6. Community correctional residential centers;
7. Health care facilities open or operating before 8:00 a.m. and after 5:00 p.m.; or
8. Homeless and transient shelters.

- C. *Administrative permit required.* An administrative permit for each unlicensed nightclub shall be obtained from the Department of Community Planning and Development and be displayed in a prominent place inside the unlicensed nightclub. This permit shall certify that, when granted, the enterprise was in compliance with subsection B. of this section or that the unlicensed nightclub fits within the exemption set forth in subsection E. of this section. This permit shall be obtained from the administrative official designated pursuant to section 21.10.005. This permit shall remain valid so long as that enterprise remains in continuous operation at that location, and does not physically expand.
- D. *Premises without permit.* Except as provided in subsection E., an unlicensed nightclub not in possession of a permit must not operate and must immediately cease all activities for which a permit pursuant to this section is required. For purposes of this section, "to operate" means to direct or control the work force of an enterprise or to start or keep the enterprise working.
- E. *Exemptions allowing amortization of existing nonconforming use.* If an unlicensed nightclub is an existing nonconforming use at the time of the effective date of this ordinance, such unlicensed nightclub has an automatic exemption for 30 days. The operator of an unlicensed nightclub which is an existing nonconforming use as of this ordinance's effective date may apply for an exemption of longer than 30 days if such application is made to the Municipal Clerk no later than 30 days after the effective date of this ordinance. The reasonableness of a request for an exemption longer than 30 days shall be decided through a quasi-judicial determination. The purpose of the exemptions created by this subsection is to allow for amortization of the investment made in such existing nonconforming use before such use is terminated by the

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operation of this ordinance. Such quasi-judicial determination shall be made with consideration of the following:

- 1 the structure which is a nonconforming use;
- 2 the location of the land on which sits a nonconforming use in relation to surrounding uses;
- 3 the investment in the nonconforming use;
- 4 the value of the land and improvements which constitute the nonconforming use relative to the value of surrounding land, improvements, and uses;
- 5 the benefit derived by the public from the nonconforming use;
- 6 the length of the period of nonconforming use;
- 7 the nature of the neighborhood surrounding the nonconforming use;
- 8 the value and condition of the improvements on neighboring premises;
- 9 the nearest area which an unlicensed nightclub can operate as a conforming use;
- 10 the cost of moving an unlicensed nightclub from an area in which such nightclub is a nonconforming use to an area in which such nightclub is a conforming use; and
- 11 any other reasonable costs which bear upon the kind and amount of damages sustained by terminating a nonconforming use.

Section 13. This ordinance shall become effective immediately upon passage and approval by the Anchorage Assembly.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 1998.

Chair of the Assembly

ATTEST:

Municipal Clerk



MUNICIPALITY OF ANCHORAGE
OFFICE OF THE MUNICIPAL ATTORNEY

MEMORANDUM

DATE: December 8, 1998

TO: Cheryl Clementson, Assembly Member

THRU: Mary K. Hughes, Municipal Attorney *MKH*

THRU: William A. Greene, Deputy Municipal Attorney *WAG*

FROM: Cliff John Groh, Assistant Municipal Attorney *CSG*

SUBJECT: AO No. 98-160(S) Regarding Unlicensed Nightclubs

Attached is the substitute version of AO No. 98-160 you requested in conversations with staff of this department and the Community Planning and Zoning Department. This substitute version varies from the original version in two ways:

- 1 This version adds to the list of uses from which the unlicensed nightclub must be at least 300 feet. Along with the schools and residential property listed in subsection 21.45.245.B, the substitute version adds rooming houses, quasi-institutional houses, community correctional residential centers, health care facilities open or operating before 8:00 a.m. and after 5:00 p.m., and homeless and transient centers.
- 2 The substitute version makes unlicensed nightclubs a conditional use in the MC marine commercial district. The original version made it a permitted use in that district. (Please note that if either version passes, existing law—AMC 21.40.015.B—would only permit unlicensed nightclubs in the business and commercial districts named in the title.)

As to your questions about the ordinance:

- 1 Both versions make operation of an unlicensed nightclub an offense under the Code. Under both versions, operation of a nightclub without a permit makes the

Cheryl Clementson, Assembly Member

December 8, 1998

Page 2 of 2

operator subject to a \$300 fine if the Municipality cannot prove intent to violate the law. If the Municipality can prove intent—and continued operation after receiving a citation is prima facie evidence of intent--such operation is a misdemeanor. The prime sponsor of the ordinance requested that this provision be made parallel to the structure in the Teen Nightclub Law.

2. The Community Planning and Zoning Department and the prime sponsor both saw the 300-foot separation requirement as a reasonable distance for the purpose.

Attachment