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Submitted by: Assemblymember WOHLFORTH
Prepared by: Assembly Office
For reading: March 23, 1999

ANCHORAGE, ALASKA
AO NO. 99-60

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE TITLE 2 TO ENACT A DEMERIT POINT SYSTEM TO IDENTIFY POTENTIAL AND ACTUAL PROBLEM ALCOHOLIC BEVERAGE LICENSEES AND ESTABLISH STANDARDS AND PROCEDURES FOR THE ASSIGNMENT OF POINTS, NOTICES, HEARINGS AND ASSEMBLY ACTION ON WARNINGS TO POTENTIAL PROBLEM LICENSEES AND ASSEMBLY PROTESTS OF THE ISSUANCE, RENEWAL, TRANSFER AND CONTINUED OPERATION OF AN ALCOHOL BEVERAGE LICENSE AND ASSEMBLY ISSUANCE, REVOCATION OR MODIFICATION OF OR IMPOSITION OF CONDITIONS ON CONDITIONAL LAND USE PERMITS FOR THE RETAIL SALE OF ALCOHOLIC BEVERAGES

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1: Anchorage Municipal Code Title 2 is hereby amended by enacting a new chapter 2.90 entitled Regulation of Alcoholic Beverages to read as follows:

2.90. 010 Point System to Identify Potential and Actual Problem Licensees

A. *Definitions.* As used in this chapter,

ABC means the State Alcohol Beverage Control Board

APD means the Anchorage Police Department

Alcohol or alcoholic beverage means any alcoholic beverage as defined in Alaska Statute 04.21.080.

Laws means the laws and regulations of the State of Alaska, the Municipality of Anchorage and the United States of America pertaining to the sale, manufacture, importation, distribution, consumption or possession of alcohol.

Licensed premises means the actual premises licensed by the ABC Board and the surrounding property owned, leased or licensed by or to the licensee for use in connection with the licensed operations, such as parking lots, driveways *etc.*

Premises licensed means only that portion of the licensed premises covered by the ABC license issued by ABC and not the adjoining or abutting parking lots *etc.*

Licensee means that person or persons licensed by the ABC Board.

Minor means any person under the age of 21 years.

Twenty-one or 21 means a minor

Problem licensee means a person described in subsection B. of this section.

Sell or sale means to furnish, sell, give, or barter, or to offer, influence or attempt to furnish, sell, give, or barter alcohol regardless of whether for or without compensation or to otherwise traffic in or offer, attempt or influence or attempt to influence the furnishing, sale, gift, barter or trafficking in alcohol.

B. Problem Licensee. A problem licensee is a licensee or proposed licensee who:

1. fails to demonstrate continuous and prospective compliance with and use of an ABC approved alcohol server awareness training program;
2. fails to demonstrate compliance or prospective compliance with the laws regulating the sale, use and possession of alcoholic beverage or the operation of or conduct on licensed premises;
3. fails to demonstrate the ability or prospective ability to maintain order and prevent unlawful conduct by the licensee, the licensee's employees and agents, the licensee's patrons and other persons on or about the licensed premises;
4. fails to make prompt payment of debts or taxes due the Municipality arising from the operation of the licensed premises; and/or
5. engages in conduct or negligently permits conduct or demonstrates or tends to demonstrate a pattern or practice of engaging in or negligently permitting conduct on or about the licensed premises injurious or harmful to the health, safety or welfare of the general public or individual members thereof.

C. Schedule of Points. For the purpose of administratively identifying potential and actual problem licensees, the following points will be assigned a license and the licensee upon the issuance of an ABC Notice of Violation, incident report, citation, formal complaint or accusation or an APD report of violation or incident, a citation, formal complaint or accusation alleging the conduct listed in the following schedule on or about the licensed premises regardless of what person is alleged to have engaged in such conduct:

SCHEDULE OF POINTS

Item Number	CONDUCT OR TYPE OF CONDUCT	POINT VALUE
1.	Sale or furnishing of alcohol to or possession or consumption of alcohol on the licensed premises by a person under 21 (AS 04.16.051)	50
2.	Drunken employee on premises (AS 04.16.030)	50
3.	Unpermitted adult entertainment or adult entertainment without administrative permit (AMC 10.40.050)	50
4.	Violation of Conditions on conditional waiver of protest	50
5.	Allowing a person under 21 on the licensed premises when not permitted by law (AS 04.16.052)	35

6	Sale or furnishing of alcohol to or possession or consumption of alcohol by an intoxicated person on the licensed premises (AS 04.16.030)	35
7.	Sale or furnishing of alcohol to a patron or the possession or consumption of alcohol by a patron during closed times (AS 04.16.010)	35
8.	Sale or consumption of alcohol on licensed premises not licensed for sale or consumption of alcohol (AS 04.16.045)	35
9.	Allowing alcohol sold for consumption on the licensed premises to be removed from the licensed premises (AS 04.11.090/AS 04.11.100)	25
10.	Solicitation of alcohol for an employee (AS 04.16.020)	25
11.	Allowing an intoxicated person on the licensed premises (AS 04.16.030)	25
12.	Allowing patrons on the licensed premises during required closed times (AS 04.16.010)	25
13.	Allowing gambling on licensed premises (AS 04.11.370)	25
14.	Violation of happy hours restrictions (AS 04.16.015)	25
15.	Allowing games or contests in the consumption of alcohol (AS 04.16.015)	20
16.	Providing or permitting prizes of alcohol (AS 04.16.015)	20
17.	Failing to post required signs regarding DWI, impoundment of vehicles, sale of alcohol to persons under 21, and furnishing alcohol to intoxicated persons (AS 04.21.065)	15

D. Assignment and Report of Point System Conduct. Based on the Schedule of Points provided in subsection C of this section, assignment and reporting of points shall be conducted as follows:

1. Points will be assigned to licensees and licensed premises on an annual basis from October 1 to September 30.
2. At the end of each quarter (December 31, March 31, June 30, September 30), the APD shall provide the Municipal Attorney on a mutually acceptable form sufficient to support the provisions of this chapter, a report of the issuance of an ABC Notice of Violation, incident report, citation, formal complaint or accusation or an APD report of violation or incident, a citation, formal complaint or accusation alleging conduct listed in the Schedule of Points for each licensee and licensed premises.
3. Immediately upon receipt of the APD report, the Municipal Attorney shall review the report and all supporting documents, and assign to and record for each licensee and license, the points for each incident of conduct listed in the Schedule of Points with an identifying reference to the APD report and incident reported according to the date of the alleged conduct.

2.90. 020 **Notice to Assembly Upon Accumulation of Points**

A. *Notice to Assembly Upon Accumulation of Points.* Immediately upon the accumulation by a licensee or licensed premises of 50 or more points assigned pursuant to section 2.90.010 within the October 1 to September 30 annual period, the Municipal Attorney shall make a report to the Municipal Clerk, to include but not be limited to the name of the licensee or licensed premises, a summary of the points assigned, and all supporting documents used to constitute the basis for the assignment of points. The Municipal Clerk shall then prepare and schedule an Assembly Information Memorandum ("AIM") on the Assembly agenda for the first regular Assembly meeting occurring after the licensee or licensed premises has accumulated 50 points and the Municipal Clerk has given the notice required by subsection A.2. of this section.

The AIM shall note the total points accumulated and the nature of each incident which occasioned the assignment of points under section 2.90.010. The Municipal Clerk shall attach to and make a part of the AIM all supporting documents which constitute the basis for the assignment of points.

2. The Municipal Clerk shall provide the licensee with a copy of this chapter and a copy of the AIM with all attachments at the address of the licensed premises not less than seven (7) days prior to the Assembly meeting at which the AIM is scheduled on the Assembly agenda. These documents may be provided by a process server, electronic mail or regular United States Mail, postage prepaid. If by U.S. mail, the documents shall be mailed not later than ten (10) days prior to the Assembly meeting at which the AIM is scheduled on the agenda.

B. *Assembly Action Upon Notice of Accumulation of Points.* At the time scheduled for acceptance of the AIM, the Assembly shall not discuss the alleged facts underlying the assessment of points unless the licensee requests to be heard thereon, but the Assembly may discuss the licensee's general conduct of business, record of police reports, or any other matter related to the Assembly's normal power of review of liquor licenses.

2.30.030 **Assembly Protest and Action on Conditional Use Permit Upon Accumulation of Points.**

A. *Notice of Assembly Protest and Action on Conditional Use Permit.* Immediately upon the completion of the October 1 - September 30 annual reporting period, the Municipal Attorney shall make a report to the Municipal Clerk listing all licensees or licensed premises which have accumulated 100 or more points assigned pursuant to section 2.90.010 during this annual reporting period. The report shall include but not be limited to the names of the licensees or licensed premises, a summary of the points assigned, and all supporting documents used to constitute the basis for the assignment of points. The Municipal Clerk shall personally serve upon each licensee or authorized agent for services of process, a Notice of Assembly Protest of Renewal, Transfer and Continued Operation of the License and Notice of Assembly Revocation of Conditional Use Permit (herein the "Notice") based on the conduct giving rise to the assignment of points. The Clerk shall copy such notices to the Municipal Attorney, the Administrative Hearing Officer, the President of the Community Council of the area in which the licensed premises is located, and the President of the Federation of Community Councils.

- 1 The Notice shall contain or be accompanied by, as appropriate:

- a. Notice to the licensee of the total points accumulated and the date and nature of each incident which occasioned the assignment of points and the points assigned for each such incident under section 2.90.010;

b. All supporting documents which constitute the basis for the assignment of points and a copy of this chapter; and

c. Prominent notice to the licensee that:

The licensee may demand a formal hearing before the Administrative Hearing Officer on the allegations contained in the supporting documents constituting the basis for the assignment of points by filing a request for hearing in accordance with Anchorage Municipal Code section 14.30.050B. within ten (10) days after the date of the notice;

ii. If requested by the licensee, a hearing before the Administrative Hearing Officer will be held not less than 10 nor more than 20 days after the date of the Notice;

iii. The hearing before the Administrative Hearing Officer shall be governed by Anchorage Municipal Code section 14.30.090

iv. The licensee's failure to demand a hearing before the Administrative Hearing Officer or the licensee's failure to appear and present evidence thereat shall:

(1) Constitute a waiver of any objection to and the right of the licensee to contest the allegations of fact contained in the APD reports constituting the basis for the assignment of points under section 2.90.010; and

(2) Result in a default decision by the Administrative Hearing Officer that the allegations in the Notice are true in accordance with Anchorage Municipal Code section 14.30.100 and/or may proceed with the hearing without the presence of the licensee.

v. That the licensee may obtain the names and nature of evidence intended to be presented by interested persons.

B. *Request for Hearing, Hearing and Decision of the Administrative Hearing Officer.* Subject to other provisions of this subsection, the request for hearing, the hearing before the Administrative Hearing Officer and the Administrative Hearing Officer's decision shall be governed by Anchorage Municipal Code sections 14.30.050B., 14.30.100 and 14.30.110 respectively.

1 Members of the general public having personal knowledge or information relevant to the allegations in the Notice may appear at the hearing and present sworn testimony and other admissible evidence material to the allegations presented by the Notice, provided that such members of the public give notice to the Administrative Hearing Office of their intent to appear and present testimony or evidence and the nature thereof not less than seven (7) days prior to the hearing.

a. The licensee may obtain the notice of interested persons intending to appear and present evidence from the Administrative Hearing Office.

2. The decision of the Administrative Hearing Officer shall contain only his findings of fact and conclusions of law without a statement of disposition, but with a statement of which possible dispositions are supported by the findings of fact and conclusions of law.
3. The Administrative Hearing Officer shall forward on the date it is rendered a duplicate original of his Decision to the Municipal Clerk and a copy thereof to the Municipal Attorney. To the extent possible, the Administrative Hearing Officer shall render decisions no later than December 31 for hearings requested by licensees on the assignment of points for the prior October 1 - September 30 reporting period.

C. *Distribution of Administrative Hearing Officer Decision and Placement on Assembly Agenda.* Immediately upon receipt of the Administrative Hearing Officer's Decision, the Municipal Clerk shall place such Decision on the Assembly agenda for action at the next regular Assembly meeting held not less than seven (7) days after service of the Decision on the licensee. The Clerk shall serve the Decision by personal service on the licensee together with notice of the time and place scheduled for Assembly action thereon. The Municipal Clerk shall also promptly deliver copies of the Decision to each Assembly member and to the President of the Community Council of the Area in which the licensed premises is located and to the President of the Federation of Community Councils.

D *Assembly Actions.* At the time scheduled for Assembly action on the Administrative Hearing Officer's decision, or if no formal hearing has been requested by the licensee and subject to the other provisions of this subsection, the Assembly shall protest the issuance, renewal, transfer or continued operation of the license, and revoke the conditional use permit authorizing the licensee's operations at the licensed premises for those licensees or licensed premises with 100 or more points accumulated during the annual reporting period and the assignment of these points have been upheld by the Administrative Hearing Officer or have not been contested by the licensee through the administrative hearing process, unless the Assembly finds, in a resolution passed after a public hearing, that unique, extenuating circumstances exist that do not affect other similarly situated licensees, and the existence of which would make such actions manifestly unfair to the licensee.

- 1 The Assembly may hear from the licensee and from other interested persons prior to taking any formal actions, provided however,
 - a. If an Administrative Hearing Officer Decision has been rendered, the licensee and other interested persons shall not present any objections, arguments or new evidence relating to the findings of fact or conclusions of law by the Administrative Hearing Officer or the allegations contained in the Notice under subsection B. of this section and shall confine their statements solely to the Assembly's action on the license or permit based on the Administrative Hearing Officer's Decision.

E. Nothing in this chapter shall terminate the powers of the Assembly to protest or revoke a conditional use permit for any liquor license existing prior to the passage and enactment of this chapter. The Assembly shall consider issues not related to liquor law violations, including other matters relating to health and safety, separately and independently from the point system provided for in this chapter.

Section 2. Ordinance Review.

Upon completion of the initial reporting period - October 1, 1999 to September 30, 2000 - and any administrative hearings pursuant to this chapter, the Mayor shall review this ordinance and report and make recommendations to the Assembly regarding the effectiveness of and continuing need for the ordinance. The report shall specifically include but not be limited to the following information:

1. The practicality of the ordinance and any problems with reporting and assigning points, hearing officer process, etc. as identified by the Anchorage Police Department, Municipal Attorney's Office, Municipal Clerk's Office, Administrative Hearing Office, and licensees.
2. The impact of the ordinance on the number of alcohol violations occurring on licensed premises; and
3. The Municipality's net cost of implementing the ordinance.

Section 3. That, upon passage and approval, this ordinance shall become effective on October 1, 1999.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 1999.

Chair

ATTEST:

Municipal Clerk