



Submitted by: Chairman of the Assembly
at the Request of the Mayor
Prepared by: Merrill Field Airport
For reading: NOVEMBER 7, 2000

CLERK'S OFFICE

ANCHORAGE, ALASKA

APPROVED

AO NO. 2000-158

Date: 12/12/00

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AUTHORIZING RENEWAL OF THE LEASE BETWEEN THE MUNICIPALITY OF ANCHORAGE AS LESSOR AND EVERGREEN HELICOPTERS OF ALASKA, INC. AS LESSEE OF LOT 3, BLOCK 5, MERRILL FIELD REPLAT, LOCATED ON THE SOUTH SIDE OF RUNWAY 6-24.

WHEREAS, the lease between the Municipality of Anchorage as Lessor and Evergreen Helicopters of Alaska, Inc. as Lessee of Lot 3, Block 5, Merrill Field Replat provides for an initial term ending on January 31, 1991 and also provides for three – ten year renewal options of which one option has been exercised by Lessee extending the Lease to January 31, 2001; and

WHEREAS, Evergreen Helicopters of Alaska, Inc., as Lessee, has elected to exercise the second option to renew for 10 years commencing on February 1, 2001 and terminating on January 31, 2011; and

WHEREAS, Evergreen Helicopters of Alaska, Inc., has operated a very successful business on Merrill Field Airport for over thirty years and has provided superior service to the general aviation community throughout Alaska; and

WHEREAS, Merrill Field Airport is very supportive of the continued operation of Evergreen Helicopters of Alaska, Inc., which further reflects a new sense of confidence and revitalization for our locally owned airport thereby having a positive economic benefit to the Municipality; and

WHEREAS, the current Merrill Field lease rate is consistent for all Merrill Field Airport land leases with like uses and considered to be the market rate for airport properties that are restricted to aeronautical uses; and

WHEREAS, AMC Chapter 25.30.050 D provides that a renewal or extension of a lease shall be treated as a new lease; and

WHEREAS, AMC Chapter 25.30.020 states that disposal of Municipal land shall be by ordinance only; now, therefore

THE ANCHORAGE MUNICIPAL ASSEMBLY ORDAINS:

Section 1. The Municipality of Anchorage is authorized to renew the lease of Lot 3, Block 5, Merrill Field Replat, located within the Anchorage Recording District of the Third Judicial District, composed of approximately 110,317 square feet to Evergreen Helicopters of Alaska, Inc. upon the terms and conditions summarized in Assembly Memorandum


No. _____ submitted to the Assembly in conjunction with this ordinance and attached hereto.

Section 2. This ordinance shall take effect immediately upon passage and approval by the Anchorage Municipal Assembly.

PASSED AND APPROVED by the Anchorage Municipal Assembly this 12 day of December, 2000.


Chairman

ATTEST:


Municipal Clerk

Submitted by: Assemblymembers TAYLOR, TESCHE
Prepared by: Assembly Office
For reading: OCTOBER 31, 2000

Postponed indefinitely

ANCHORAGE, ALASKA
AO NO. 2000-160

AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE
MUNICIPAL CODE SUBSECTIONS 9.28.020B.2., 9.28.023A.2., AND 9.28.023A.3.
(CONCERNING DRIVING WHILE INTOXICATED) TO CHANGE THE MAXIMUM BLOOD
ALCOHOL CONCENTRATION FROM 0.10 PERCENT TO 0.08 PERCENT.



12 M 2.

MUNICIPALITY OF ANCHORAGE
OFFICE OF THE MUNICIPAL ATTORNEY

MEMORANDUM

DATE: December 12, 2000

TO: Mayor Wuerch
Allan Tesche, Assembly Member
Melinda Taylor, Assembly Member

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

FROM: Dennis A. Wheeler, Assistant Municipal Attorney *DAW*

SUBJECT: AO 2000-160; changing the maximum BAC from 0.10 to .08

QUESTION:

If passed, would AO 2000-160 violate, either expressly or implicitly, state law?

BRIEF ANSWER:

Subject to the following Background and Discussion, our Brief Answer is yes.

BACKGROUND:

Under State law, a defendant commits the crime of driving while intoxicated if they are either: 1) driving while under the influence of intoxicating liquor, or any controlled substance (driving while actually impaired); or 2) driving with a BAC of 0.10 or greater (regardless of actual impairment).

For driving while actually impaired under 1) above, there is a presumption in the state law that a defendant is not actually impaired if their BAC is 0.05 or less. If the defendant's BAC is greater than 0.05 but less than 0.10, there is no presumption. If the defendant's BAC is 0.10 or greater, the defendant is presumed to be impaired. The municipal ordinance would raise a presumptive hurdle for defendants that is not currently in state law (municipal code would apply a presumption of impairment if the BAC is between 0.08 and 0.10).

¹ This opinion is in accord with a similar opinion issued by the State of Alaska Legislative Affairs Agency, except to the extent that the State's opinion asserts a municipal code change might affect sentencing for prior convictions. That portion of the opinion relies on case law that has since been modified by AS 28.35.030(o)(4)(A).

For driving with a BAC of 0.10 or greater under 2) above, the proposed municipal ordinance would make criminal a range of conduct currently legal under state law (driving with a BAC of between 0.08 and 0.10, if not actually impaired, would be criminal under municipal code, but not in state law).

DISCUSSION:

The ordinance may frustrate the state's policy of uniformity in traffic laws. This alone is significant enough to put the ordinance at risk of invalidation. In addition, a reviewing court may strike down the proposed ordinance because the change in the code would make municipal law inconsistent with state law. Alaska Statute 28.01.010 provides that "a municipality may not enact an ordinance that is inconsistent with the provisions of this title or the regulations adopted under this title." In *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska App. 1981), the court invalidated as inconsistent a municipal ordinance which provided that a defendant was under the influence if his BAC was 0.10 or greater, when state law at the time stated that a reading of 0.10 or greater was merely a rebuttable presumption of impairment.

We note here that AS 28.01.010(b) does provide an exception whereby a municipality can enact local code that is inconsistent with the state traffic code. However, there is a hurdle that is laid out in the *Simpson* case: first, the Municipality must demonstrate the existence of a "specific local requirement"; second, the Municipality must show that the specific local problem could not be addressed in a manner consistent with the provisions of the Alaska Motor Vehicle Code. The court found that a high incidence of alcohol-related traffic accidents in the Anchorage area could not, standing alone, support a finding of a "specific local requirement." "At the very least, in order to demonstrate the existence of a 'specific local requirement' within the meaning of AS 28.01.010(b), it would be incumbent upon the municipality to demonstrate that the problem of drunk driving in Anchorage was disproportionately high in comparison with the extent of the problem throughout the state."² The Municipality may or may not have available to it the kind and quality of evidence needed to justify enactment of an ordinance inconsistent with state law.

CONCLUSION:

The proposed ordinance would in all likelihood be invalidated by a court, if challenged. While there may be some small room to argue otherwise, we recommend this ordinance be postponed pending a change in state law.

cc: Greg Moyer

² *Simpson*, 635 P.2d at 1208.