

CLERK'S OFFICE  
APPROVED  
Date: 2-27-01

Submitted by: Chairman of the Assembly at the Request  
of the Mayor  
Prepared by: Department of Law  
For reading: FEBRUARY 13, 2001

ANCHORAGE, ALASKA  
AO No. 2001- 51

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE TO REPLACE THE PHRASES  
*DRIVING WHILE INTOXICATED* AND (DWI) WITH *DRIVING UNDER THE INFLUENCE* AND (DUI).

Section 1. Anchorage Municipal Code sections 9.28.020, 9.28.021, 9.28.022, 9.28.023, 9.28.024,  
9.28.025, 9.28.026, 9.48.130, and 10.50.035 are hereby amended as follows: *(the remainder of each section  
is not affected and therefore not set out)*

9.28.020 Driving under the influence [WHILE INTOXICATED]—Prohibited;  
sentencing.

A. It is unlawful for any person to commit the crime of driving under the influence  
[WHILE INTOXICATED].

B. A person commits the crime of driving under the influence [WHILE INTOXICATED]  
if he operates, drives or is in actual physical control of a motor vehicle or operates an  
aircraft or a watercraft:

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C Upon conviction for driving under the influence [WHILE INTOXICATED] under this  
section:

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2 Except in mitigated circumstances, the court shall impose more than the  
mandatory minimum sentence. Mitigated circumstances do not exist if any of  
the following circumstances are present:

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d. The defendant was on release under AS 12.30.020 or AS 12.30.040 or  
on probation for another DUI [DWI] or refusal charge or conviction.

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5 If the person has any interest in the vehicle used in the commission of the  
offense, the court shall order that:

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Any order of impoundment or  
forfeiture entered under this subsection is subject to the rights of lienholders,  
owners, lessors, lessees, and co-owners who are not the person convicted of  
driving under the influence [WHILE INTOXICATED] as those rights are  
adjudicated in civil proceedings under section 9.28.026. If the municipality has  
brought a civil action under section 9.28.026 seeking impoundment or  
forfeiture as against all those with an interest in the vehicle except the person  
charged with a violation of section 9.28.020, that civil action shall provide the

charged with a violation of section 9.28.020, that civil action shall provide the sole forum in which lienholders, owners, lessors, lessees, and co-owners who claim an interest in the vehicle but are not the person charged with a violation of section 9.28.020 can seek relief.

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E. For purposes of this chapter, the following terms shall have the meaning given in this subsection:

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4. *Previously convicted* means having been convicted in this or another jurisdiction, within ten years preceding the date of the present offense, of operating a motor vehicle, aircraft or watercraft under the influence [WHILE INTOXICATED] under this section or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under AS 28.35.032 or section 9.28.022 or another law or ordinance with substantially similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under AMC 9.28.020.B.2.

F. For purposes of this section, convictions for both driving under the influence [WHILE INTOXICATED] and for refusal to submit to a chemical test of breath under section 9.28.021, if arising out of a single transaction and a single arrest, are considered one previous conviction.

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J. The magistrate or judge who sets the conditions of release for a person arrested for driving under the influence [WHILE INTOXICATED] shall at the same time set a vehicle return bond for the vehicle alleged in an oral statement of a police officer to have been used in the commission of the offense if the records of the Alaska department of public safety, division of motor vehicles or the records of an agency with similar responsibilities in another state show that the person arrested for the offense has any interest in the vehicle.

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The vehicle return bond set under the authority of this subsection may only be posted by a person alleged to have used the vehicle in the commission of the offense of driving under the influence [WHILE INTOXICATED] or by a person who agrees to return the vehicle upon order of the court upon penalty of forfeiture of the bond. The vehicle return bond set under the authority of this subsection may be posted at the municipality. A vehicle return bond may be posted in cash only. A vehicle return bond shall be set at a minimum of:

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A seizure is "legally unjustified" only if there was: (1) no reasonable suspicion for the stop of the vehicle leading to an arrest for driving under the influence [WHILE INTOXICATED] based on the individual allegedly operating, driving, or being in actual physical control of the vehicle; or (2) no probable cause for the arrest of an

individual for driving under the influence [WHILE INTOXICATED] based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

K. The conditions of release established for a person charged with driving under the influence (DUI) [WHILE INTOXICATED (DWI)] shall include at a minimum an order that the person's interest, if any, in the vehicle alleged in an oral statement by a police officer, criminal complaint, information, or indictment to have been used in the commission of the offense be forfeited if the person does not appear as ordered. This subsection applies to any release before judgment of conviction on a charge of driving under the influence [WHILE INTOXICATED], including any release on the person's own recognizance.

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(AO No. 267-76; AO No. 78-72; AO No. 78-230(S); AO No. 80-122; AO No. 81-75; AO No. 82-126; AO No. 83-168, 10-17-83; AO No. 89-52; AO No. 91-56(S); AO No. 91-190; AO No. 94-68(S), § 11, 8-11-94; AO No. 95-84(S-1), §§ 1--9, 4-27-95; AO No. 95-163(S), §§ 1--5, 8-8-95; AO No. 97-72, § 1, 6-10-97; AO No. 97-87, § 1, 6-3-97)

**9.28.021      Driving under the influence [WHILE INTOXICATED]--Implied consent to chemical test.**

A person who operates, drives or is in actual physical control of a motor vehicle within the municipality or who operates an aircraft as defined by section 9.28.020.E.1 or who operates a watercraft as defined by section 9.28.020.E.2 shall be considered to have given consent to a chemical test of his breath for the purpose of determining the alcoholic content of his blood or breath if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating, driving or in actual physical control of a motor vehicle or operating an aircraft or a watercraft under the influence [WHILE INTOXICATED]. The test shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating, driving or in actual physical control of a motor vehicle or operating an aircraft or a watercraft in the municipality under the influence [WHILE INTOXICATED].

(AO No. 78-72; AO No. 79-194; AO No. 80-122; AO No. 82-126; AO No. 83-168, 10-17-83; AO No. 89-52)

**9.28.022      Driving under the influence [WHILE INTOXICATED]--Refusal to submit to chemical tests.**

A. If a person under arrest refused the request of a law enforcement officer to submit to a chemical test under section 9.28.021, after being advised by the officer that the refusal will, if that person was arrested while operating or driving a motor vehicle for which a driver's license is required, result in the denial or revocation of the license or nonresident privilege to drive, that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an

aircraft or a watercraft under the influence [WHILE INTOXICATED], and that the refusal is a misdemeanor, a chemical test shall not be given, except as provided by section 9.28.025.

B. The refusal of a person to submit to a chemical test of his or her breath under subsection A of this section is admissible evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating, driving or in actual physical control of a motor vehicle or operating an aircraft or watercraft under the influence [WHILE INTOXICATED].

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D. Upon conviction for refusal to submit to chemical tests under subsection C of this section:

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2. Except in mitigated circumstances, the court shall impose more than the mandatory minimum sentence. Mitigated circumstances do not exist if any of the following circumstances are present:

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d. The defendant was on release under AS 12.30.020 or AS 12.30.040 or on probation for another DUI [DWI] or refusal charge or conviction.

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F. For purposes of this section, convictions for both driving under the influence [WHILE INTOXICATED] and for refusal to submit to a chemical test of breath under section 9.28.021, if arising out of a single transaction and a single arrest, are considered one previous conviction.

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A vehicle may be recovered without payment of the towing and storage costs, including the administrative fee, only if a court makes a specific finding that the seizure of the vehicle was legally unjustified and such specific finding follows a contested hearing or is pursuant to a stipulation between the parties. A seizure is "legally unjustified" only if there was: (1) no reasonable suspicion for the stop of the vehicle leading to an arrest for driving under the influence [WHILE INTOXICATED] based on the individual allegedly operating, driving, or being in actual physical control of the vehicle; or (2) no probable cause for the arrest of an individual for driving under the influence [WHILE INTOXICATED] based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

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(AO No. 82-126; AO No. 83-168, 10-17-83; AO No. 91-56(S); AO No. 91-190; AO No. 95-84(S-1), §§ 10--17, 4-27-95; AO No. 95-163(S), §§ 6--9, 8-8-95; AO No. 97-87, § 2, 6-3-97)

**9.28.023      Driving under the influence [WHILE INTOXICATED]--Chemical analysis of breath or blood.**

A. Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating, driving or in actual physical control of a motor vehicle or operating an aircraft or a watercraft under the influence [WHILE INTOXICATED] under section 9.28.020.B.1 or B.3, the amount of alcohol in the person's breath or blood at the time alleged shall give rise to the following presumptions:

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B. Upon the trial of a civil or criminal action or proceedings arising out of acts alleged to have been committed by a person operating, driving or in actual physical control of a commercial motor vehicle under the influence [WHILE INTOXICATED] in violation of section 9.28.020.B.5, if there was less than 0.04 percent by weight of alcohol in the person's blood, or less than 40 milligrams of alcohol per 100 milliliters of the person's blood, or less than 0.04 gram of alcohol per 210 liters of the person's breath, that fact does not give rise to a presumption that the person was or was not under the influence of an intoxicating liquor, but that fact may be considered with other competent evidence in determining whether the person was under the influence of an intoxicating liquor. If there was 0.04 percent or more by weight of alcohol in the person's blood, or 40 milligrams or more of alcohol per 100 milliliters of the person's blood, or 0.04 gram or more of alcohol per 210 liters of the person's breath, it is presumed that the person was under the influence of an intoxicating liquor.

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(CAC 9.28.020; AO No. 78-72; AO No. 79-194; AO No. 80-122; AO No. 81-75; AO No. 82-126; AO No. 90-41; AO No. 94-68(S), § 12, 8-11-94)

**9.28.024      Driving under the influence [WHILE INTOXICATED]--Responsibility for costs of incarceration.**

(AO No. 94-68(S), § 13, 8-11-94; AO No. 94-236, § 1, 1-3-95)

**9.28.025      Driving under the influence [WHILE INTOXICATED]--Administration of chemical tests without consent.**

(AO No. 82-126; AO No. 83-168, 10-17-83)

**9.28.026      Driving under the influence [WHILE INTOXICATED]--Impoundment and forfeiture of vehicle.**

A motor vehicle that is operated, driven or in the actual physical control of an individual arrested for or charged with an alleged violation of section 9.28.020, pertaining to driving under the influence [WHILE INTOXICATED], or an alleged violation of section 9.28.022, pertaining to refusal to submit to chemical tests, may be impounded and may be forfeited to the municipality in accordance with this section.

It shall be presumed that a vehicle operated by or driven by or in the actual physical control of an individual arrested for or charged with an alleged violation of either section 9.28.020 or section 9.28.022 has been so operated by the registered owners thereof or has been operated by another person with the knowledge and consent of the registered owners. A vehicle so operated is declared to be a public nuisance for which the registered owners hold legal responsibility subject only to the defenses as set forth by law. The proposes of this section and the criminal impoundment and forfeiture provisions of sections 9.28.020 and 9.28.022 include protecting the public, removing public nuisances, and deterring driving under the influence [WHILE INTOXICATED], but do not include the generation of revenues for the municipality.

A. *General provisions.*

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9. Pursuant to Alaska Rule of Court 41(a)(1), the municipality may enter into an agreement with the registered owner or lienholder of the vehicle to resolve a civil impound or forfeiture action and permit release of the vehicle. Any such agreement shall include:

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- b. Agreement that the owner or lienholder will take reasonable steps to prevent the individual arrested for or charged with driving under the influence [WHILE INTOXICATED] or with refusal to submit to chemical tests from operating the vehicle until properly licensed; and

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18. For purposes of this section, convictions for both driving under the influence [WHILE INTOXICATED] and for refusal to submit to chemical tests arising out of a single transaction and a single arrest are considered one previous conviction. The term "previously convicted" means having been convicted in this or another jurisdiction, within ten years preceding the date of the present offense, of operating a motor vehicle, aircraft, or watercraft under the influence [WHILE INTOXICATED] under section 9.28.020 or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under section 9.28.022 or 28.35.032 or another law or ordinance with substantially similar elements.

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- 25 For purposes of this section, a seizure is legally unjustified only if there was:

a. [(1)] No reasonable suspicion for the stop of the vehicle leading to an arrest for driving under the influence [WHILE INTOXICATED] based on the individual allegedly operating, driving, or being in actual physical control of the vehicle; or

b. [(2)] No probable cause for the arrest of an individual for driving under the

influence [WHILE INTOXICATED] based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

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(AO No. 82-205; AO No. 83-168, 10-17-83; AO No. 93-87(S-2), 1-1-94; AO No. 94-71(S), § 1, 4-26-94; AO No. 95-84(S-1), § 18, 4-27-95; AO No. 95-163(S), §§ 10--19, 8-8-95; AO No. 97-87, § 3, 6-3-97)

**9.48.130**      **Vehicular offenses amenable to disposition without court appearance by payment of a fine, offenses requiring court appearance, or offenses correctable without fine or appearance.**

In accordance with AS 28.05.151, a citation issued for violation of any of the following sections of this title shall be subject to disposition with payment of a fine in lieu of a court appearance or as otherwise prescribed:

Driving under the influence [WHILE INTOXICATED]      9.28.020.A    Mand/Cr

(CAC 9.48.060; AO No. 78-72; AO No. 88-12; AO No. 88-167; AO No. 88-180; AO No. 89-134; AO No. 90-24; AO No. 94-68(S), § 38, 8-11-94; AO No. 95-67(S), § 5, 7-1-95; AO No. 95-102, § 1, 4-26-95; AO No. 95-117, § 3, 6-29-95; AO No. 95-163(S), § 20, 8-8-95; AO No. 99-15, § 1, 2-9-99)

**10.50.035**      **Operation of licensed premises.**

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B.    Persons seeking the issue, transfer or renewal of licenses issued by the state alcoholic beverage control board under AS title 4 and other applicable provisions of law shall comply with the following operations procedures:

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4.    *Notice of penalties.* No later than September 27, 1985, operators shall place, at conspicuous locations within licensed premises, a clear and legible sign describing applicable penalties for driving under the influence [WHILE INTOXICATED], and for service or sale of alcoholic beverages to minors or intoxicated persons.

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8.    *Warning signs for impoundment and forfeiture of vehicles seized pursuant to an arrest for or charge of driving under the influence [WHILE INTOXICATED] or refusal to submit to chemical tests.* Operators shall display at conspicuous places in licensed premises two signs warning that vehicles are seized in cases of driving under the influence [WHILE INTOXICATED] or refusal to submit to chemical tests. One of these warning signs shall be at least 11 inches by 14 inches in size, and must read, in lettering at least one-half inch high and in contrasting colors or black and white, "DRIVE UNDER THE INFLUENCE [DRUNK]--LOSE YOUR CAR." The

sign described in the preceding sentence must carry a logo or illustration approved by the chief of police or his or her designee which shows an automobile being towed. The second warning sign shall be at least 11 inches by 14 inches and must read, in letters at least one-quarter inch high and in contrasting colors or black and white, "WARNING: IF YOU DRIVE UNDER THE INFLUENCE [WHILE INTOXICATED] OR LET ANYONE DRIVE YOUR VEHICLE UNDER THE INFLUENCE [WHILE INTOXICATED], YOU WILL LOSE YOUR VEHICLE. The police SEIZE cars and trucks driven by intoxicated drivers. A vehicle will be IMPOUNDED for 30 days for the driver's first DUI [DWI] offense. A vehicle will be FORFEITED if the driver has been convicted of DUI [DWI] in the past ten (10) years."

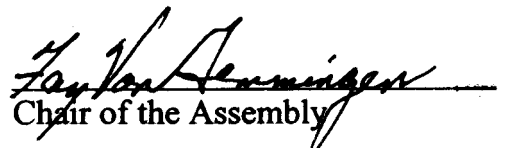
(AO No. 85-128(S); AO No. 86-58; AO No. 89-17; AO No. 95-84(S-1), § 20, 5-27-95; AO No. 95-202, § 1, 11-14-95)

**Section 2.** The amended sign text required in AMC 10.50.035B.8., as amended above, is required only of new or replacement signs installed after (*insert the effective date of the ordinance*).

**Section 3.** Anchorage Municipal Code is hereby further amended by replacing "driving while intoxicated" and "DWI" wherever else they may occur with "driving under the influence" and "DUI".

**Section 4.** This ordinance shall become effective immediately upon its passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 27<sup>th</sup> day of February, 2001.

  
Chair of the Assembly

ATTEST:

  
Municipal Clerk