

Submitted by: Chair of the Assembly at the Request
of the Mayor

Prepared by: Department of Law

For reading: August 14, 2001

ANCHORAGE, ALASKA

AO No. 2001-150

AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS WITHIN CHAPTER 9.28 (CONCERNING DRIVING UNDER THE INFLUENCE) TO CHANGE THE ~~MAXIMUM~~ BLOOD ALCOHOL CONCENTRATION FROM 0.10 PERCENT TO 0.08 PERCENT, TO MODIFY THE DEFINITION OF *PREVIOUSLY CONVICTED*, TO MODIFY THE PRESUMPTIONS REGARDING INTOXICATION, AND TO MAKE OTHER AMENDMENTS TO CHAPTER 9.28.

THE ANCHORAGE ASSEMBLY ORDAINS

Section 1. Anchorage Municipal Code section 9.28.020 is hereby amended to read as follows: *(the remainder of the section is not affected and therefore not set out)*

9.28.020 Driving under the influence--Prohibited; sentencing.

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

2. When, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.08[10] percent or more by weight of alcohol in the person's blood or 80 [100] milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.08 [10] grams or more of alcohol per 210 liters of the person's breath;

C. Upon conviction for driving under the influence under this section:

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:

- f. The defendant had a breath test result of 0.15 grams or more of alcohol per 210 liters of the defendant's breath as determined by a chemical test within four hours after the alleged offense was committed.

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

2. *Operate a watercraft* means to navigate [OR USE] a vessel used or capable of being

used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inside the territorial limits of the municipality.

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 subsection [AMC] 9.28.020[.]B.2.

(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)

Section 2. The amendments to Anchorage Municipal Code subsections 9.28.020B. and C., above, shall be effective September 1, 2001. The amendments to subsection E. are effective immediately.

Section 3. Anchorage Municipal Code section 9.28.021 is hereby amended to read as follows:

9.28.021 **Driving under the influence--Implied consent to chemical test.**

A. 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 subsection 9.28.020[.]E.1 or who operates a watercraft as defined by subsection 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].

B. Nothing in this section shall be construed to restrict searches or seizures under a warrant issued by a judicial officer in addition to a test permitted under this section.

(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)

Section 4. Anchorage Municipal Code section 9.28.023 is hereby amended to read as follows:

9.28.023 **Driving under the influence--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 subsection 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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1. If there was 0.04 [0.05] percent or less by weight of alcohol in the person's blood, or 40 [50] milligrams or less of alcohol per 100 milliliters of his blood, or 0.04 [0.05] grams or less of alcohol per 210 liters of his breath, it shall be presumed that the person was not under the influence of intoxicating liquor.
2. If there was in excess of 0.05 percent but less than 0.08 [10] percent by weight of alcohol in the person's blood, or in excess of 40 [50] but less than 80 [10] milligrams of alcohol per 100 milliliters of his blood, or in excess of 0.04 [0.05] grams but less than 0.08 [10] grams of alcohol per 210 liters of his breath, that fact does not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but that fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.
3. If there was 0.08 [0.10] percent or more by weight of alcohol in the person's blood, or 80 [100] milligrams or more of alcohol per 100 milliliters of his blood, or 0.08 [0.10] grams or more of alcohol per 210 liters of his breath, it shall be presumed that the person was under the influence of intoxicating liquor.

(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)

Section 5. The amendments to section 9.28.023, above, shall be effective September 1, 2001

Section 6. Anchorage Municipal Code section 9.28.026 is hereby amended to read as follows:

9.28.026 Driving under the influence--Impoundment and forfeiture of vehicle.

- A.** 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.
- B.** 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 purposes [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.

C [A]. *General provisions.*

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 while under the influence [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.

Section 7. This ordinance shall become effective immediately upon its passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2001.

Chair of the Assembly

ATTEST:

Municipal Clerk