

CLERK'S OFFICE

**AMENDED AND APPROVED**

Date: 3-16-04

ANCHORAGE, ALASKA

AO NO. 2004-62

AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTION 8.10.090 TO  
RESTRUCTURE THE ELEMENTS OF THE OFFENSE, DEFINE A FAMILY MEMBER, AND  
FOR OTHER PURPOSES.

THE ANCHORAGE ASSEMBLY ORDAINS:

**Section 1.** Anchorage Municipal Code section 8.10.090 is amended to read:

**8.10.090**      **Illegal Use of Telephone or Electronic Communication.**

A. It is unlawful for any person, anonymously or otherwise, by telephone or electronic communication, to: [TELEPHONE OR ELECTRONICALLY COMMUNICATE WITH ANOTHER PERSON WITH AN INTENT TO HARASS THAT PERSON OR THAT PERSON'S FAMILY.]

1. telephone another person and fail to terminate the connection with intent to harass and impair the ability of that person to place or receive telephone calls or electronic communications;
2. make repeated and unwanted contact with the intent to harass the recipient or that person's family member;
3. make a telephone call or electronic communication with the intent to harass the recipient or that person's family member that is unreasonably abusive and offensive to the recipient; or
4. make any threat during a telephone call or electronic communication which recklessly places the recipient in fear of injury or death or in fear that another will suffer injury or death.

[B. IT IS PRIMA FACIE EVIDENT OF INTENT TO HARASS THAT THE CALLER

1. MADE REPEATED TELEPHONE CALLS OR ELECTRONIC COMMUNICATIONS, HAVING BEEN TOLD SUCH CALLS WERE UNWELCOME; OR
2. CALLED OR COMMUNICATED ANONYMOUSLY; OR
3. USED PROFANE OR PATENTLY ABUSIVE LANGUAGE; OR

4. THREATENED THE RECEIVER OR THE RECEIVER'S FAMILY.]

B [C]. Violation of this section shall, upon conviction be punished by a fine of not more than \$2,000.00 or imprisonment for not more than six months or both such fine and imprisonment.

C. Family member shall have the meaning provided in Anchorage Municipal Code subsection 8.10.020C.2.

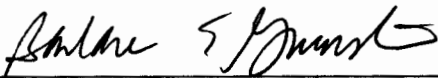
**Section 2.** This ordinance shall be effective immediately upon its passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 16<sup>th</sup> day of March, 2004.



Chair of the Assembly

ATTEST:



Municipal Clerk

**MUNICIPALITY OF ANCHORAGE**  
**Summary of Economic Effects -- General Government**

AO Number: 2004- 62

Title: AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTION 8.10.090 TO RESTRUCTURE THE ELEMENTS OF THE OFFENSE, DEFINE A FAMILY MEMBER, AND FOR OTHER PURPOSES.

Sponsor: Department of Law  
Preparing Agency: Department of Law  
Others Impacted: N/A

CHANGES IN EXPENDITURES AND REVENUES:		(In Thousands of Dollars)				
	FY04	FY05	FY06	FY07	FY08	
Operating Expenditures						
1000 Personal Services						
2000 Non-Labor						
3900 Contributions						
4000 Debt Service						
TOTAL DIRECT COSTS:	\$ -	\$ -	\$ -	\$ -	\$ -	
Add: 6000 Charges from Others						
Less: 7000 Charges to Others						
FUNCTION COST:	\$ -	\$ -	\$ -	\$ -	\$ -	
REVENUES:	\$ 5	\$ 5	\$ 5	\$ 5	\$ 5	
CAPITAL:						
POSITIONS: FT/PT and Temp						

**PUBLIC SECTOR ECONOMIC EFFECTS:**

The Criminal Division of the Department of Law has declined to pursue on average 37 cases per year under the current ordinance language because of constitutional questions. The Criminal Division anticipates being able to charge and bring an additional amount of 8 cases per year with the new language. With a conviction rate estimated at 80%, approximately 36 convictions per year under the new language is projected. It is difficult to estimate the amount of penalties, given penalties are set by the judge and often there are accompanying charges. The municipal revenues may be expected to increase approximately \$5000 per year.

**PRIVATE SECTOR ECONOMIC EFFECTS:**

The impact on the private sector is minimal, given that only individuals convicted of the offense will be fined. The penalty varies from \$0 to \$2,000. Accused defendants will incur the costs of defending the action.

Prepared by: Department of Law  
Approved: Frederick H. Boness, Municipal Attorney

Telephone: 343-4250  
Telephone: 343-4545

**MUNICIPALITY OF ANCHORAGE**  
**ASSEMBLY MEMORANDUM**

No. AM 216 -2004

Meeting Date: March 2, 2004

**From: Mayor Begich**

**Subject: AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTION 8.10.090 TO RESTRUCTURE THE ELEMENTS OF THE OFFENSE, DEFINE A FAMILY MEMBER, AND FOR OTHER PURPOSES.**

On October 15, 2002, the Assembly approved AO 2002-149, changing one word of Anchorage Municipal Code subsection 8.10.090A. The discussion of AO 2002-149 centered on possible infringement of First Amendment rights. The Assembly Chair requested the Department of Law to rewrite the ordinance due to difficulties encountered by the criminal division of the Department of Law in prosecuting under Anchorage Municipal Code section 8.10.090, as currently written. Note that AO 2003-73, effective April 22, 2003, amended penalties in Title 8 increasing the fine to \$2,000.

The ordinance removes the prima facie evidence structure, due to difficulty in prosecuting the offense and because of unconstitutional rulings in other jurisdictions. The ordinance simplifies prosecution by setting four alternative grounds for prosecution, each with elements independent of the others. The ordinance also requires specific intent to harass for prosecution of unreasonably abusive and offensive telephone calls or electronic communications. The specific intent requirement satisfies the constitutionality issues. Further, the ordinance requires only a reckless mental state if a true threat is made causing a victim to be fearful and the victim's fear is reasonable.

The ordinance is intended to address the concerns debated when AO 2002-149 was approved, as further expressed in the accompanying AM 690-2002. If enacted, this ordinance allows prosecution for illegal use of the telephone without being overbroad or infringing on the individual's constitutional right to free speech. It also allows prosecution where the call has legitimate purposes, but the defendant threatens the victim in a manner that causes fear for life or safety.

**APPROVAL OF THIS ORDINANCE IS RECOMMENDED.**

Prepared by: Frederick H. Boness, Municipal Attorney  
Concur: Denis C. LeBlanc, Municipal Manager  
Respectfully submitted: Mark Begich, Mayor

**Content Information****Content ID :** 001505**Type:** Ordinance - AO

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**Author:** fehlenrl**Initiating Dept:** Legal**Date Prepared:** 2/3/04 2:54 PM**Director Name:** Frederick H. Boness**Assembly****Meeting Date** 03/02/04**MM/DD/YY:****Public Hearing** 03/16/04**Date MM/DD/YY:**

2004 FEB 23 PM 12:54

M.O.A

**Workflow History**

<u>Workflow Name</u>	<u>Action Date</u>	<u>Action</u>	<u>User</u>	<u>Security Group</u>	<u>Content ID</u>
AllOrdinanceWorkflow	2/3/04 2:57 PM	Checkin	fehlenrl	Public	001505
AllOrdinanceWorkflow	2/3/04 2:59 PM	Reject	fehlenrl	Public	001505
AllOrdinanceWorkflow	2/3/04 3:03 PM	Checkin	fehlenrl	Public	001505
Legal_SubWorkflow	2/3/04 3:04 PM	Approve	fehlenrl	Public	001505
OMB_SubWorkflow	2/10/04 8:51 AM	Approve	wiltsep	Public	001505
MuniManager_SubWorkflow	2/23/04 9:10 AM	Approve	leblancdc	Public	001505
MuniMgrCoord_SubWorkflow	2/23/04 10:44 AM	Approve	katkusja	Public	001505

**CONSENT AGENDA - INTRODUCTION**