

See AO 2011-55(S-1)

Submitted by: ASSEMBLY MEMBER TRAINI
Assembly Member Honeman
Prepared by: Assembly Counsel
For reading: May 10, 2011

**ANCHORAGE, ALASKA
AO NO. 2011-55(S)**

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE CODE SECTIONS 10.50.035, 21.50.160, AND 21.50.500 TO REQUIRE IDENTIFICATION CHECK IN THE RETAIL SALE AND SERVICE OF ALCOHOLIC BEVERAGES AT A RESTAURANT OR EATING PLACE, AT ANY PREMISES LICENSED AS A BEVERAGE DISPENSARY, AND IN THE RETAIL SALE OF ALCOHOLIC BEVERAGES BY A PACKAGE LIQUOR STORE, WITH SPECIFIC REFERENCE TO APPLICABILITY OF 1.45.010; ESTABLISHING IDENTIFICATION CHECK AS A CONDITION OF USE AND STANDARD FOR SITE PLAN APPROVAL FOR CERTAIN USES RELATED TO ALCOHOLIC BEVERAGES; AND ESTABLISHING IMMEDIATE EFFECTIVE DATES FOR LAND USE CONDITIONAL PERMITS AND SITE PLAN APPROVALS IN CURRENT USE FOR THESE DESIGNATED USES.

WHEREAS, pursuant to AMC 21.50.160, the Assembly retains approval authority for all conditional land use permits involving the retail sale or service of alcoholic beverages; and

~~WHEREAS, administrative site plan review for use related to the sale and service of beer and wine for consumption on the licensed premises of a restaurant or eating place is governed under AMC 21.50.500, and subject to requirements imposed by the Assembly; and~~

WHEREAS, the Assembly finds that the sale of alcoholic beverages to underage patrons can be significantly curbed by mandatory identification check; and

WHEREAS, the Assembly finds that the sale of alcoholic beverages to patrons made ineligible because of a court-imposed legal ban related to dangerous or abusive past behavior can be curbed by mandatory identification check; and

WHEREAS, mandatory identification check has been resoundingly endorsed by Anchorage voters on Proposition 11 in the April 5, 2011 municipal election; and

WHEREAS, it is in the public's best interest to minimize the sale of alcoholic beverages to underage patrons and those made ineligible by dangerous and bad actions related to the consumption of alcohol; and

~~WHEREAS, the same rule should apply to all retail package liquor stores, bars, and restaurants serving alcoholic beverages; and~~

WHEREAS, it is the intent of this ordinance that there shall be no civil liability to any third party created by this ordinance, for any failure by a licensee, or its agents or employees, to comply with mandatory identification check; and

WHEREAS, the Assembly takes action related to the sale of alcoholic beverages within the Municipality of Anchorage as a matter of protecting public safety; now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code section 10.50.035 is hereby amended to read as follows (*unaffected subsections are not set out*):

10.50.035 Operation of licensed premises.

- A. Except as otherwise provided in this subsection, the operations procedures set forth in subsection B of this section shall apply to all persons seeking the issue, renewal or transfer of any license issued by the state alcoholic beverage control board by virtue of AS Title 4 and other applicable provisions of law allowing the sale or service of alcoholic beverages. Subsections B.1 and B.5 of this section shall not apply to persons seeking the issue, transfer or renewal of licenses issued under AS Title 4 which do not authorize the sale or service of alcoholic beverages for consumption on the premises licensed. Subsection C of this section shall apply to these uses:

~~1. Use related to the sale and service of beer and wine for consumption on the licensed premises of a restaurant or eating place, subject to site plan approval;~~

~~2. Use subject to conditional use approval for premises with a beverage dispensary license;~~

~~1 [3]. Use subject to conditional use approval for the retail sale of alcoholic beverages by a package liquor store.~~

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- C. ~~Mandatory identification check in the retail sale or service of alcoholic beverages:~~ Current government-issued identification with birth date and photograph shall be required for all on-premise sales ~~or service of alcoholic beverages by a restaurant or eating place, any establishment holding a beverage dispensary license, and any package liquor store.~~ **Violation of Failure to conduct the mandatory identification check required by under this section is a violation of code and the individual failing to conduct the mandatory identification check shall be subject to the civil general penalty provisions of AMC 1.45.010, in addition to any express criminal penalties provided for under chapter 8.75.** For purposes of mandatory identification check required by this section:

1. "Current government-issued" means a state, federal or foreign government picture identification in force and effect for a specified

period stated within the identification, when presented prior to expiration of the period stated. A state government identification with birth date and photograph issued by any state of the United States is included within the meaning of "current government-issued" if the period of validity is specified and the identification is presented prior to expiration of the period stated.

2. The subsequent invalidation of the identification as a bona fide government-issued identification does not invalidate the retail establishment's compliance.

3. An ongoing pattern of non-compliance with the mandatory identification check required by this code may result in Assembly review of the conditions of use or under the procedures in AMCR 21.05, may result in the revocation of a conditional use previously approved by the Assembly. Action by the Assembly on licensee's conditional use under this section shall be in addition to any criminal or civil penalty applicable to the individual making the sale without performing the mandatory identification check.

~~In addition to any other specific or general penalty provided by code, non-compliance with mandatory identification check may be grounds to review conditions of use or revoke a conditional use previously approved by the Assembly.~~

4. This section 10.50.035 and section 21.50.160 are not intended to create, transfer, or support civil liability to any party for the actions or inactions of a person who purchases alcohol from a licensed establishment, with or without compliance by the licensee or its agents or employees, with the conditions of operation adopted under municipal code as conditional use standards.

(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; AO No. 2001-51, § 1, 2-27-01)

Section 2. Anchorage Municipal Code section 21.50.160 is hereby amended to read as follows (*unaffected subsections are not set out*):

21.50.160 Conditional use standards -- Uses involving sale of alcoholic beverages.

D. The assembly may, in connection with approval of a conditional use permit under this section, impose such special terms and conditions or modify existing conditions governing operation of that license as are in the public interest, and are consistent with the purposes of this title.

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1. Mandatory identification check as described in 10.50.035 shall be deemed in immediate effect as a condition of use for all licensed beverage dispensary conditional use approvals and in all package liquor store conditional use approvals in current use as of July 1, 2011, and shall be a mandatory condition for any package liquor store conditional use coming before the Assembly for approval thereafter.

(GAAB 21.05.060; AO No. 77-355; AO No. 82-170; AO No. 85-21; AO No. 87-62; AO No. 93-143(S-3), § 1, 5-10-94; AO No. 2005-35, § 1, 3-14-06; AO No. 2007-121(S-1), § 14, 10-23-07)

Section 3. Anchorage Municipal Code section 10.50.035 is hereby further amended to add mandatory identification check to operational requirements included in conditional use approval for premises with a beverage dispensary license as follows (language unaffected is not set out):

10.50.035 Operation of licensed premises.

- A. Except as otherwise provided in this subsection, the operations procedures set forth in subsection B of this section shall apply to all persons seeking the issue, renewal or transfer of any license issued by the state alcoholic beverage control board by virtue of AS Title 4 and other applicable provisions of law allowing the sale or service of alcoholic beverages. Subsections B.1 and B.5 of this section shall not apply to persons seeking the issue, transfer or renewal of licenses issued under AS Title 4 which do not authorize the sale or service of alcoholic beverages for consumption on the premises licensed. Subsection C of this section shall apply to these uses:

2. Use subject to conditional use approval for premises with a beverage dispensary license.

- C. Mandatory identification check in the retail sale or service of alcoholic beverages: Current government-issued identification with birth date and photograph shall be required for all on-premise sale or service of alcoholic beverages by an establishment holding a beverage dispensary license, and any package liquor store. Failure to conduct the mandatory identification check required by this section is a violation of code and the individual failing to conduct the mandatory identification check shall be subject to the civil penalty provisions of AMC 1.45.010 in addition to any express criminal penalties provided for under chapter 8.75. For purposes of mandatory identification check required by this section:

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5. Mandatory check of current government-issued identification from all patrons prior to admittance at the entrance of an establishment holding a beverage dispensary license complies with the requirement for mandatory identification check under this section.

a. Food service and a restaurant designation does not create a per se exemption from the requirement of mandatory identification check as a condition of use for a beverage dispensary license establishment.

b. For establishments with a restaurant designation for less than 100% of the premises, if the area for restaurant dining is structurally segregated from bar or pub beverage dispensary service in a manner requiring patrons to choose between entry to the restaurant or entry to the bar or pub prior to seating and service, identification check of all clientele prior to entry into the bar or pub area satisfies the requirement of mandatory identification check.

(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; AO No. 2001-51, § 1, 2-27-01)

Section 4. Anchorage Municipal Code section 21.50.160 is further amended to read as follows (unaffected subsections are not set out):

21.50.160 Conditional use standards -- Uses involving sale of alcoholic beverages.

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D. The assembly may, in connection with approval of a conditional use permit under this section, impose such special terms and conditions or modify existing conditions governing operation of that license as are in the public interest, and are consistent with the purposes of this title.

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2. Mandatory identification check as described in 10.50.035 shall be deemed in immediate effect as a condition of use for all licensed beverage dispensary conditional use approvals in current use as of July 1, 2013, and a mandatory condition for any beverage dispensary conditional use coming before the Assembly for approval thereafter.

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(GAAB 21.05.060; AO No. 77-355; AO No. 82-170; AO No. 85-21; AO No. 87-62; AO No. 93-143(S-3), § 1, 5-10-94; AO No. 2005-35, § 1, 3-14-06; AO No. 2007-121(S-1), § 14, 10-23-07)

~~[ANCHORAGE MUNICIPAL CODE SECTION 21.50.500 IS HEREBY AMENDED TO READ AS FOLLOWS
(UNAFFECTED SUBSECTIONS ARE NOT SET OUT):~~

~~**21.50.500 SITE PLAN REVIEW STANDARDS—RESTAURANT OR EATING PLACE
ALCOHOLIC BEVERAGE LICENSE USE.**~~

~~A. ADMINISTRATIVE SITE PLAN REVIEW.~~

~~1. RESTAURANT OR EATING PLACE ALCOHOLIC BEVERAGE LICENSE USE
STANDARDS. A RESTAURANT OR EATING PLACE LICENSED BY THE STATE
ALCOHOLIC BEVERAGES CONTROL BOARD TO SELL BEER AND WINE FOR
CONSUMPTION ONLY ON THE LICENSED PREMISES IS EXEMPT FROM THE
CONDITIONAL USE REQUIREMENTS OF 21.50.160 AND MAY BE REVIEWED
UNDER THIS SECTION, PROVIDED THE PRINCIPAL AND ACCESSORY USES ARE
PERMITTED NON-RESIDENTIAL USES. THE STANDARDS IN 21.50.020 AND
MANDATORY IDENTIFICATION CHECK IN 10.50.035 SHALL APPLY. MANDATORY
IDENTIFICATION CHECK IN 10.50.035 SHALL BE DEEMED IN IMMEDIATE EFFECT
FOR ALL ADMINISTRATIVE SITE PLAN APPROVALS IN CURRENT USE UNDER THIS
SECTION AS OF _____, 2011. REQUIREMENTS IMPOSED BY THE
ASSEMBLY WHEN ACTING ON THE BEER AND WINE LICENSE SHALL APPLY.
ADMINISTRATIVE REVIEW UNDER THIS SECTION IS AVAILABLE ONLY AFTER
ASSEMBLY APPROVAL OF THE RESTAURANT OR EATING PLACE LICENSE FOR
BEER AND WINE.~~

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~~{AO No. 2007-121(S-1), § 15, 10-23-07}~~

Section 5. Prior to implementation of Section 3 and Section 4 extending mandatory identification check as a condition of use to alcohol uses for beverage dispensary licensees, and by no later than December 31, 2012, the Assembly shall review and hold public hearing on mandatory identification check as a condition of use for beverage dispensary licensees. Topics for review will include such items as:

- a. Technological alternatives that limit the risk of sale of alcoholic beverages to ineligible patrons.**
- b. Changes, if any, implemented under state law.**
- c. Industry experience and compliance.**
- d. Any unanticipated consequences.**
- e. Supplementary provisions under title 21 or other municipal code.**
- f. Public health and safety needs of the community.**

Section 6. No amendment of AMC 21.50.500, *Site plan review standards—Restaurant or eating place alcohol beverage license use*, is intended to become effective under this ordinance; therefore mandatory identification check does not apply to restaurant or eating place alcohol beverage license use under AMC 21.50.500.

Section 7. Anchorage Municipal Code subsection 21.10.015 notwithstanding, alcohol-related use is reserved to the Assembly. This ordinance does not require Planning and Zoning Commission review. Section 1, Section 2, Section 5, Section 6 and this Section 7 shall become effective July 1, 2011, upon passage and approval by the Assembly.

Section 8. Upon passage and approval of this ordinance by the Assembly but subject to any additional modification by Assembly action in the interim, Section 3 and Section 4 shall become effective July 1, 2013.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2011.

Chair

ATTEST:

Municipal Clerk



MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM
NO. AM 283-2011

Meeting Date: May 10, 2011

From: Assembly Member Traini and Assembly Member Honeman

Subject: AO 2011-55(S) — AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE CODE SECTIONS 10.50.035, 21.50.160, AND 21.50.500 TO REQUIRE IDENTIFICATION CHECK IN THE RETAIL SALE AND SERVICE OF ALCOHOLIC BEVERAGES AT A RESTAURANT OR EATING PLACE, AT ANY PREMISES LICENSED AS A BEVERAGE DISPENSARY, AND IN THE RETAIL SALE OF ALCOHOLIC BEVERAGES BY A PACKAGE LIQUOR STORE, WITH SPECIFIC REFERENCE TO APPLICABILITY OF 1.45.010; ESTABLISHING IDENTIFICATION CHECK AS A CONDITION OF USE AND STANDARD FOR SITE PLAN APPROVAL FOR CERTAIN USES RELATED TO ALCOHOLIC BEVERAGES; AND ESTABLISHING IMMEDIATE EFFECTIVE DATES FOR LAND USE CONDITIONAL PERMITS AND SITE PLAN APPROVALS IN CURRENT USE FOR THESE DESIGNATED USES.

The April 5, 2011 advisory vote on Proposition 11 was overwhelming positive: 67.25% of Anchorage voters approve implementing mandatory identification for package liquor stores. Since introduction of AO 2011-55 on April 11, 2011, we have taken the opportunity to hear from citizens and industry representatives at Public Safety Committee Meetings and in individual comment. We appreciate the industry's efforts to assist in ensuring that we have a reasonable ordinance. We also appreciate the extra efforts of package liquor store owners and managers who implemented mandatory identification check in advance of code.

All alcohol-related land use requires conditional use approval from the Assembly, and by its very term "conditional use" means the Assembly may implement reasonable conditions. In lieu of area-by-area or licensee-by-licensee implementation, the fairest implementation of 100% identification check by package liquor stores is implementation across the board, effective July 1, 2011. This creates a level condition for the industry without extra avoidable administrative expense to the industry or the Municipality.

AO 2011-55(S) reflects many of the suggestions discussed during meetings of the Public Safety Committee and keeps the primary focus on implementation for package liquor store conditional use. As sponsors, we propose a two-year delayed implementation for alcohol beverage dispensary conditional use. This will allow for future public hearing, to be scheduled by the Assembly prior to December 31, 2012, in advance of implementation effective July 1, 2013. This delay will give the community, the industry, and the Assembly the opportunity to review performance, and collateral issues such as integration of the Title 21 Rewrite and associated regulations; chapter 8.75 of the criminal code; developments under state law; and technological advancements. The intent and focus of this ordinance is protecting the health and safety of members of the community through reflective consideration and implementation of conditions for land use related to alcohol. The intent is not to search for ways and means to revoke conditional use permits. Instead, we rely on the continued cooperation of the industry, its member associations, and the public to make implementation of the advisory vote on Proposition 11 and this ordinance a success.

Respectfully submitted: Dick Traini, Assembly Member Section 4
Paul Honeman, Assembly Member Section 5