

Submitted by: ASSEMBLY MEMBER TRAINI

Prepared by: Assembly Counsel

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See AO 2011-91(S-2)

ANCHORAGE, ALASKA

AO NO. 2011-91(S)

1 **AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING**
2 **ANCHORAGE MUNICIPAL CODE TITLE 11 TO ADD PREVENTIVE AND PROTECTIVE**
3 **MEASURES IN RESPONSE TO CRIMINALLY OFFENSIVE SEXUAL BEHAVIOR BY AN**
4 **APPLICANT OR LICENSED CHAUFFEUR, PRESCRIBING RULES AND CONDITIONS TO**
5 **GUIDE ADMINISTRATIVE ACTION, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE**
6 **DATE.**

7
8 WHEREAS, the high incidence of sexual assault in Alaska and in our community calls
9 for effective pretrial measures to protect victims and the public, as well as legislative action
10 and initiative to effectively address sexual assault, including support for increased public
11 awareness and sexual assault prevention measures, as recognized by the Anchorage
12 Assembly in AR 2010-114 and AR 2011-78; and

13
14 WHEREAS, the public must in part depend on municipal regulation of certain
15 businesses through licensing and permits, to preserve health, safety, and general welfare of
16 municipal residents and visitors, and to aid in crime prevention; and

17
18 WHEREAS, in the protection of health, safety, and general welfare, the Municipality of
19 Anchorage regulates taxicab service and vehicles for hire, requiring chauffeurs to be
20 licensed, vehicles to be regulated and numbered, and chauffeur conduct to be courteous,
21 prudent and safe in manner; and

22
23 WHEREAS, the Assembly finds availability and use of a regulated vehicle, chauffeur's
24 license, or uniform, to gain physical proximity or the trust of a victim for purposes of criminal
25 sexual assault warrants immediate protective action by the Transportation Inspector to
26 preserve public safety and trust through final adjudication, unless the Transportation
27 Inspector determines judicial restrictions are in place that best protect the public; and

28
29 WHEREAS, the Anchorage Taxicab Permit Owners Association (ATPOA), whose
30 members hold many of the taxicab permits issued by the Municipality of Anchorage,
31 has offered electronic written comment and has no objection to this ordinance; and

32
33 WHEREAS, ACLU of Alaska has offered written comment, and additional
34 clarification is incorporated below; now, therefore,

35
36 THE ANCHORAGE ASSEMBLY ORDAINS:

37
38 **Section 1.** Anchorage Municipal Code section 11.10.010 is hereby amended to read as
39 follows (*language indicating no amendment is included for context only and other definitions*
40 *not affected are not set out*):

11.10.010 Definitions.

When used in chapters 11.10—11.40:

*** *** ***

F. Criminally offensive sexual behavior includes the offenses named in Article 4 of AS 11.41 or identified by similar name or elements under Anchorage municipal code or the law of another jurisdiction, and offenses included as sexual offenses under the law of another jurisdiction.

*** *** ***

[Code Revisor to re-letter remaining definitions to maintain alphabetical order.]

(AO No. 57-75; AO No. 78-177; AO No. 80-19(S); AO No. 81-149; AO No. 84-18; AO No. 87-8; AO No. 87-126(S); AO No. 94-21(S), § 1, 4-12-94; AO No. 97-134(S-1), § 1, 12-9-97; AO No. 98-51(S), § 1, 5-4-99)

Section 2. Anchorage Municipal Code section 11.10.100 is hereby amended to read as follows (language indicating no amendment is included for context only and other subsections not affected are not set out):

11.10.100 Hearings--Appeals.

*** *** ***

C. A person aggrieved by the denial, suspension, or revocation of a chauffeur's license by the Transportation Inspector pursuant to subsection A of this section, Section 11.10.110.A., or Section 11.10.085 may, within 15 days of the denial or revocation decision, and upon payment of the filing fee required by Section 11.10.160, appeal that decision to the chairman of the Commission or his or her designee. After a hearing conducted pursuant to Chapter 3.60 of this Code, the chairman of the Commission or his or her designee may authorize the conditional or unconditional issuance or reinstatement of a denied, suspended, or revoked license upon an affirmative showing at a hearing by the appellant that he or she has been rehabilitated and has the ability to assume the responsibilities of a chauffeur, or that the Transportation Inspector exceeded his or her authority, or that continued suspension of or refusal to issue or reinstate the license would otherwise work a substantial injustice.

*** *** ***

(AO No. 57-75; AO No. 78-177; AO No. 79-58; AO No. 80-19(S); AO No. 81-149; AO No. 84-18; AO No. 85-87; AO No. 87-126(S); AO No. 88-21; AO No. 93-220, § 5, 2-22-94; AO No. 98-51(S), § 1, 5-4-99)

1 **Section 3.** Anchorage Municipal Code section 11.10.110 is hereby amended to read as
2 follows (*language indicating no amendment is included for context only and other subsections*
3 *not affected are not set out*):
4

5 **11.10.110 Denial, suspension, or revocation of license or permit.**
6

- 7 A. The Transportation Inspector shall have the power to suspend or revoke a
8 chauffeur's license.
- 9 1. The Transportation Inspector shall suspend or revoke a chauffeur's
10 license if a chauffeur is convicted by a court of competent jurisdiction of
11 an offense set forth in Section 11.30.040.
12
 - 13 2. The Transportation Inspector may suspend or revoke a chauffeur's
14 license upon receipt of evidence sufficient to cause the Transportation
15 Inspector to conclude by a preponderance of the evidence (i.e., that it is
16 more likely than not) that a chauffeur is incapable of controlling a motor
17 vehicle safely. Such evidence may include violation of this title, Title 9 of
18 this code, and/or any relevant medical or psychological evidence
19 presented.
20
 - 21 3. The Transportation Inspector shall deny, suspend, or revoke the
22 chauffeur's license of any chauffeur failing or refusing to take a drug
23 and/or alcohol test as authorized by Section 11.10.085.
24
 - 25 4. The Transportation Inspector may suspend or revoke the chauffeur's
26 license of a chronic violator. As used in this section, "chronic violator"
27 means a chauffeur for which four citations have been issued during a
28 period of 12 consecutive months, regardless of whether each of the four
29 citations concerns the same or different provisions of this title or
30 regulations enacted thereunder. Citations which have been dismissed on
31 appeal do not count towards the sum of the four citations.
32
 - 33 5. The Transportation Inspector shall suspend the chauffeur's license upon
34 receipt of evidence or complaint sufficient to cause the Transportation
35 Inspector to conclude by a preponderance of the evidence (i.e., that it is
36 more likely than not) the chauffeur used a regulated vehicle, chauffeur
37 license, or uniform to gain physical proximity or the trust of the victim for
38 criminally offensive sexual behavior by the chauffeur. If the
39 Transportation Inspector's conclusion is supported by the circumstances
40 of an arrest, the suspension shall be immediate. The suspension shall
41 continue until final judicial adjudication of the arrest, unless the
42 Transportation Inspector makes a written finding that restrictions have

1 been judicially imposed on the chauffeur for the period until final judicial
2 adjudication of the arrest is complete, the public is best protected by the
3 judicially imposed restrictions, and the public trust is preserved. For
4 purposes of this subsection, final adjudication of the arrest
5 includes a dismissal or withdrawal of the criminal charges, with or
6 without prejudice.
7

8 *** *** ***

9 B. Actions against permits.

10
11 1. The Commission shall suspend or revoke a permit upon finding after a
12 hearing that:

13 *** *** ***

14 d. A preponderance of the evidence supports the conclusion that the
15 permittee has failed to use the permit in a manner and fashion
16 consistent with the public safety and welfare.

17 *** *** ***

18 ii. A determination to revoke a permit under this subsection
19 shall be based upon the total number of such civil citations
20 and criminal convictions during a period of twelve (12)
21 consecutive months. A conclusion that the permittee has
22 failed to use the permit in a manner and fashion consistent
23 with the public safety and welfare may further be supported
24 or ameliorated by:

25 *** *** ***

26 (3) Evidence of remedial actions taken by a permittee in
27 response to a chauffeur's civil or criminal citation,
28 suspension of chauffeur's license, or criminal
29 conviction. For purposes of this section, the term
30 "remedial action" means action reasonably
31 calculated to prevent recurrence of the same or
32 similar violations by chauffeurs operating under the
33 permittee's permit, and may include actions taken by
34 the permittee either before or after notification of a
35 chauffeur citation or conviction.

36 *** *** ***

37 3. Upon issuance of a civil citation or a criminal conviction against a
38 chauffeur, the Transportation Inspector shall determine whether the
39 citation or conviction demonstrates use of the permit contrary to public
40 safety and welfare and, if so, shall notify the permittee of such
41 determination, at the time the permittee is provided notice of the citation
42 or conviction.

1 *** *** ***

2 F. A chauffeur must surrender his or her chauffeur's license to the Transportation
3 Inspector within three (3) days of any suspension or revocation.

4
5 (AO No. 57-75; AO No. 78-177; AO No. 80-19(S); AO No. 81-149; AO No. 84-18; AO
6 No. 85-87; AO No. 87-8; AO No. 87-126(S); AO No. 88-21; AO No. 92-50; AO No. 93-
7 220, § 6, 5-23-94; AO No. 93-220, § 7, 2-22-94; AO No. 93-220, §§ 8, 9, 8-21-94; AO
8 No. 94-93(S), § 2, 5-16-94; AO No. 98-51(S), § 1, 5-4-99)

9
10 **Section 4.** Anchorage Municipal Code section 11.30.040 is hereby amended to read as
11 follows (*language indicating no amendment is included for context only and other subsections*
12 *not affected are not set out*):

13
14 **11.30.040 Issuance of chauffeur's license.**

15
16 The Transportation Inspector shall issue a Municipal chauffeur's license to an
17 applicant only if:

18 *** *** ***

19
20 C. The applicant has not had his or her driver's license suspended or revoked
21 within one year prior to the application date;

22
23 D. There are no charges for criminally offensive sexual behavior in any jurisdiction
24 pending against the applicant [HAS NOT HAD HIS OR HER CHAUFFEUR'S LICENSE
25 REVOKED UNDER SECTION 11.10.120 WITHIN ONE YEAR PRIOR TO THE APPLICATION DATE];

26
27 E. The applicant has not had a felony or misdemeanor conviction entered by a
28 court of competent jurisdiction within five (5) years for [OF]:

- 29
30 1. Assignment, prostitution, solicitation for the purpose of prostitution,
31 offering to secure another for the purpose of prostitution, maintaining a
32 vehicle for the purpose of prostitution or accepting money from a
33 prostitute for any of the aforementioned purposes;
- 34
35 2. Sale, transportation, possession or use of any controlled substance as
36 defined in AS 11.71 or any similar law of another jurisdiction;
- 37
38 3. Any felony or misdemeanor which includes as an element the use or
39 threat of force upon a person;
- 40
41 4. Burglary, larceny, fraud, theft or embezzlement; [OR]
- 42

1 5. Any offense which pertains to sexual abuse of a minor or sexual
2 exploitation of a minor; or [AND]
3

4 6. Criminally offensive sexual behavior in any jurisdiction; and
5

6 F. Each representation made in the application is correct. Any false or misleading
7 statement or misrepresentation as to a material matter in an application shall be
8 grounds for denial of the application or revocation of the license.
9

10 G. The applicant is not required to register as a sex offender or child kidnapper
11 pursuant to AS 12.63.010.
12

13 (AO No. 57-75; AO No. 78-177; AO No. 79-58; AO No. 80-19(S); AO No. 84-18; AO
14 No. 85-87; AO No. 87-8; AO No. 87-126(S); AO No. 98-51(S), § 3, 5-4-99; AO No.
15 2006-117, § 1, 8-29-06)
16

17 **Section 5.** This ordinance shall become effective immediately upon passage and approval
18 by the Assembly.
19

20 PASSED AND APPROVED by the Anchorage Assembly this _____ day of
21 _____, 2011.
22

23
24
25
26
27 _____
Chair

28 ATTEST:
29
30
31

32 _____
33 Municipal Clerk



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 476-2011

Meeting Date: August 30, 2011

1 **From:** ASSEMBLY MEMBER TRAINI

2 **Subject:** AO 2011-91—AN ORDINANCE OF THE ANCHORAGE MUNICIPAL
3 ASSEMBLY AMENDING AMC TITLE 11 TO ADD PREVENTIVE AND
4 PROTECTIVE MEASURES IN RESPONSE TO CRIMINALLY OFFENSIVE
5 SEXUAL BEHAVIOR BY AN APPLICANT OR LICENSED CHAUFFEUR,
6 PRESCRIBING RULES AND CONDITIONS TO GUIDE ADMINISTRATIVE
7 ACTION, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.
8

9 The purpose of this ordinance is to provide licensing and regulatory legislation that vests in
10 the Transportation Inspector the ability to suspend a municipally issued chauffeur's license
11 when the Transportation Inspector concludes by a preponderance of the evidence (i.e. that it
12 is more likely than not) the chauffeur used a municipally regulated vehicle, municipally issued
13 chauffeur's license, or uniform to gain physical proximity or the trust of the victim for sexual
14 assault by the municipally licensed chauffeur.
15

16 Municipally issued licenses, permits and regulation of taxicabs and vehicles for hire create a
17 public trust. When these are used to gain criminal sexual advantage, public trust in municipal
18 oversight and the regulated industry suffers. While criminal conviction requires proof beyond
19 a reasonable doubt, suspension of a municipal license pending final judicial outcome of the
20 arrest does not.
21

22 The regulatory regime for taxicabs and vehicles for hire includes a comprehensive hearing
23 and appeal process. This proposed ordinance utilizes the appellate process in place. The
24 proposed ordinance uses the same definition adopted by the Assembly for sexual offences in
25 the licensing of ice cream vendors; provides for immediate suspension in certain
26 circumstances involving sexual assault; and incorporates sexual offenses into the existing list
27 of felony and misdemeanor convictions reviewed by the Transportation Inspector in the
28 application process.
29

30 Additional language from the existing ordinance is provided for context, and is not proposed
31 for amendment.
32

33
34 Respectfully submitted:

35
36 Dick Traini - Assembly Member, Section 4
37
38
39