

See AO 2011-112

ANCHORAGE, ALASKA
AO No. 2011-112(S)

1 AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE TITLE 8 TO ADD
2 NEW OFFENSES FOR SITTING OR LYING DOWN ON SIDEWALKS IN THE
3 DOWNTOWN IMPROVEMENT DISTRICT AND FOR PEDESTRIAN
4 INTERFERENCE, AMENDING SECTION 8.75.170 REGARDING PROHIBITED
5 PANHANDLING, AND AMENDING THE FINE SCHEDULE AT SECTION 14.60.030
6 ACCORDINGLY.

7
8 THE ANCHORAGE ASSEMBLY ORDAINS:

9
10 ~~Section 1.~~ Anchorage Municipal Code is amended by adding a new section
11 8.75.180 to read as follows:

12
13 ~~8.75.180~~ Sitting or lying down on public sidewalks in downtown
14 improvement district.

15
16 A. ~~Prohibition.~~ No person shall sit or lie down upon a public sidewalk, or
17 upon a blanket, chair, stool, or any other object placed upon a public
18 sidewalk, in the Downtown Improvement District, defined as the area
19 bounded by 1st Avenue on the North, Gambell Street on the East, 9th
20 Avenue on the South, and L Street on the West, during the hours
21 between

- 22 1. 6:00 a.m. and 11:59 p.m. on Monday, Tuesday, Wednesday or
23 Thursday; or
24 2. 6:00 a.m. Friday through 2:30 a.m. Saturday; or
25 3. 6:00 a.m. Saturday through 2:30 a.m. Sunday.

26
27 B. ~~Exceptions.~~ The prohibition in subsection A shall not apply to any
28 person:

- 29 1. ~~Sitting or lying down on a public sidewalk due to a medical~~
30 ~~emergency;~~
31 2. ~~Who, as the result of a disability, utilizes a wheelchair, walker, or~~
32 ~~similar device to move about;~~
33 3. ~~Operating or patronizing a commercial establishment conducted~~
34 ~~on the public sidewalk pursuant to a sidewalk encroachment~~
35 ~~permit under section 24.30.020; or a person participating in or~~
36 ~~attending a parade, festival, performance, race, rally,~~
37 ~~demonstration, meeting, or similar event conducted on the~~
38 ~~public sidewalk pursuant to a right of way special activity permit~~
39 ~~under regulation section 9.14.004 or a parade permit under~~
40 ~~regulation chapter 9.36.;~~
41 4. ~~Sitting on a chair or bench located on the public sidewalk which~~
42 ~~is supplied by a public agency or by the abutting private property~~

owner;

- ~~5. Sitting on a public sidewalk within a passenger loading zone while waiting for public or private transportation; or~~
- ~~6. Waiting in line to purchase, receive or deliver an item or gain access to an adjacent property, such as waiting to purchase an item from a street vendor, or tickets at a ticket window, or waiting for an establishment to open to receive or deliver goods or services, so long as the person is as far from the traveled roadway as practicable.~~

~~Nothing in any of these exceptions shall be construed to permit any conduct which is prohibited by section 8.30.125, pedestrian interference, or any conduct otherwise prohibited by this code.~~

- ~~C. No person shall be charged under this section unless the person engages in conduct prohibited by this section after having been notified by a law enforcement officer that the conduct violates this section.~~
- ~~D. Violation of this section shall be punished by a fine of not more than \$100.00.~~
- ~~E. As an alternative to the remedies, procedures and penalties provided in this Title and Section 1.45.010, a violation of this section may be charged as a civil violation subject to and prosecuted in accordance with Title 14 and in such case shall be punishable by a civil penalty in accordance with Chapter 14.60.~~

Section 1[2]. Anchorage Municipal Code is amended by adding a new section 8.30.125 to read as follows:

8.30.125 Pedestrian interference.

A. The following definitions apply in this section:

- 1. "Obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle which such other person or vehicle has a right to make, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional rights, and acts authorized pursuant to a sidewalk encroachment permit under section 24.30.020, a right-of-way special activity permit under regulation section 9.14.004, or a parade permit under regulation chapter 9.36. shall not constitute obstruction of pedestrian or vehicular traffic.
- 2. "Public place" means a place to which the public or a substantial group of persons has access and includes, but is not limited to,

streets, highways, sidewalks, alleys, transportation facilities,
parking areas, convention centers, sports arenas, schools,
plazas, parks, and playgrounds.

B. It is unlawful for any person to, in a public place, intentionally and substantially obstruct pedestrian or vehicular traffic.

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 90 days, or both such fine and imprisonment.

Section 2 [3]. Anchorage Municipal Code section 8.75.170 is hereby amended to read as follows *(the remainder of the section is not affected and therefore not set out)*:

8.75.170 Prohibited panhandling.

*** **

B. It is [SHALL BE] unlawful to engage in an act of panhandling:

1. After sunset and before sunrise.

2. W[~~w~~]hen either the panhandler or the person being solicited is located at any of the following locations:

- a. at a bus stop;
- b. in any public transportation vehicle or public transportation facility;
- c. in a vehicle which is parked or stopped on a public street or alley;
- d. in a sidewalk café; or
- e. within 20 feet in any direction from an automatic teller machine or entrance to a bank.

3. In the Downtown Improvement District, defined as the area bounded by 1st Avenue on the North, Gambell Street on the East, 9th Avenue on the South, and L Street on the West.

C. It shall be unlawful to engage in an act of panhandling in an aggressive manner as set forth in 1--6 of this subsection:

*** **

D. *Penalty.* A fine of no more than \$300.00 shall be imposed for any act of panhandling prohibited by [THIS] subsection B. Violations of subsection C. shall, upon conviction, be punished by a fine of not more than \$2,000.00 or imprisonment for not more than 90 days, or both such fine and imprisonment. [FIRST OFFENSE UPON CONVICTION SHALL BE NO LESS THAN \$50.00 OR EIGHT HOURS OF COMMUNITY SERVICE; SECOND OFFENSE UPON CONVICTION SHALL BE NO LESS THAN \$100.00 OR 16 HOURS OF COMMUNITY SERVICE; AND THIRD OFFENSE UPON CONVICTION SHALL BE NO LESS THAN \$300.00 OR]

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1. As an alternative to the remedies, procedures and penalties provided in this section and section 14.50.10, a violation of subsection B. may be charged as a civil violation subject to and prosecuted in accordance with Title 14 and in such case shall be punishable by a civil penalty in accordance with chapter 14.60. This alternative is not available for violations of subsection C.
2. A defendant may offset fines imposed for a violation of subsection B. by voluntary participation in an approved community service program, alcohol, drug or other appropriate rehabilitation program, or job training program, if any such programs are available.
3. A court imposing fines for a violation of subsection C. may order the defendant to complete an approved community service program; alcohol, drug or other appropriate rehabilitation program; or job training program, if any such programs are available.
4. For each hour of community service completed, the court or administrative hearing officer shall offset the fine by an amount equal to the current minimum wage required by the Alaska Wage and Hour Act, AS 23.10.
5. Upon presenting proof of completion of an alcohol, drug, or other appropriate rehabilitation program to the court or administrative hearing officer, [A]ny fees paid toward rehabilitation treatment shall [MAY] offset any fines imposed [PAID FOR FIRST OR SUBSEQUENT OFFENSES].

(AO No. 2004-109, § 1, 8-17-04)

Section 3 [4]. Anchorage Municipal Code section 14.60.030 is amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

14.60.030 Fine schedule.

The fine schedule under this chapter is as follows:

TABLE INSET:

<u>Code Section</u>	<u>Offense</u>	<u>Penalty/Fine</u>
***	***	***
<u>8.75.170B.</u>	<u>Prohibited panhandling</u>	<u>up to 300.00</u>
<u>8.75.180</u>	<u>Sitting/lying down on sidewalks</u>	<u>up to 100.00</u>
	<u>in Downtown Improvement District</u>	
***	***	***

(AO No. 93-167(S-1), § 1, 4-13-94; AO No. 94-108, § 1, 10-5-94; AO No. 94-134, § 2, 9-8-94; AO No. 95-42, § 2, 3-23-95; AO No. 95-67(S), § 9, 7-1-

1 95; AO No. 95-102, § 1, 4-26-95; AO No. 95-118, § 3, 9-1-95; AO No. 95-
 2 163(S), § 21, 8-8-95; AO No. 95-195(S-1), 1-1-96; AO No. 96-51(S-1), § 2,
 3 8-1-96; AO No. 96-96(S-1), § 2, 2-1-97; AO No. 96-126(S), § 3, 10-1-96;
 4 AO No. 96-137(S), § 9, 1-2-97; AO No. 97-88, § 3, 6-3-97; AO No. 97-107,
 5 § 3, 11-17-97; AO No. 97-133(S), § 1, 11-11-97; AO No. 98-27(S-1), § 2,
 6 11-11-97; AO No. 98-160, § 2, 12-8-98; AO No. 99-13(S), 2-9-99; AO No.
 7 99-91(S), § 4, 7-13-99; AO No. 2000-64, § 1, 4-18-00; AO No. 2000-
 8 116(S), § 4, 7-18-00; AO No. 2000-127(S), § 2, 10-14-00; AO No. 2000-
 9 129(S), § 26, 11-21-00; AO No. 2001-48, § 1, 3-13-01; AO No. 2001-74(S),
 10 § 2, 4-17-01; AO No. 2001-4, § 2, 2-6-01; AO No. 2001-145(S-1), § 11, 12-
 11 11-01; AO No. 2003-68, § 1, 9-30-03; AO No. 2003-97, § 4, 9-30-03; AO
 12 No. 2003-117, § 2, 1-28-03; AO No. 2003-130, § 8, 10-7-03; AO No. 2003-
 13 152S, § 10, 1-1-04; AO No. 2004-1, § 2, 1-1-03; AO No. 2004-99, § 2, 6-
 14 22-04; AO No. 2004-100(S-1), § 6, 1-1-05; AO No. 2004-171, § 1, 1-11-05;
 15 AO No. 2005-160, § 9, 11-1-05; AO No. 2005-84(S), § 3, 1-1-06; AO No.
 16 2005-185(S), § 35, 2-28-06; AO No. 2005-124(S-1A), § 33, 4-18-06; AO
 17 No. 2006-39, § 6, 4-11-06; AO No. 2006-54, § 1, 5-2-06; AO No. 2006-80,
 18 § 1, 6-6-06; AO No. 2007-50, § 4, 4-10-07; AO No. 2007-60, § 4, 11-1-07;
 19 AO No. 2007-70, § 3, 5-15-07; AO No. 2008-84(S), § 5, 7-15-08; AO No.
 20 2009-61, § 3, 7-7-09; AO No. 2009-82, § 5, 7-7-09; AO No. 2009-40(S), §
 21 3, 7-21-09; AO No. 2009-112, § 4, 10-13-09; AO No. 2009-122, § 2, 12-17-
 22 09; AO-2010-35(S), § 4, 5-11-10; AO No. 2010-39, § 2, 5-11-10; AO No.
 23 2010-87(S), § 3, 12-7-10; AO No. 2011-46, § 4, 4-12-11; AO No. 2011-59,
 24 § 10, 5-24-11)

25
 26 **Section 4 [5].** This ordinance shall become effective **December 22, 2011**, thirty
 27 ~~(30)~~ days after **upon** passage and approval by the Anchorage Assembly.

28
 29 PASSED AND APPROVED by the Anchorage Assembly this _____ day of
 30 _____, 2011.

31
 32
 33
 34 _____
 Chair of the Assembly

35 ATTEST:

36
 37
 38 _____
 39 Municipal Clerk



MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM
No. AM 748-2011

Meeting Date: December 13, 2011

1 **From: ASSEMBLY MEMBER Traini**
2 **Subject: AO 2011-112(S) AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL**
3 **CODE TITLE 8 TO ADD NEW OFFENSES FOR SITTING OR LYING DOWN ON**
4 **SIDEWALKS IN THE DOWNTOWN IMPROVEMENT DISTRICT AND FOR PEDESTRIAN**
5 **INTERFERENCE, AMENDING SECTION 8.75.170 REGARDING PROHIBITED**
6 **PANHANDLING, AND AMENDING THE FINE SCHEDULE AT SECTION 14.60.030**
7 **ACCORDINGLY.**

8
9 The intent of this ordinance is to pass and approve the Mayor's ordinance, AO 2011-112,
10 without Section 1.

11
12 Section 1 is not needed to ensure against pedestrian interference on sidewalks.

13
14 Section 2 of the original ordinance addresses pedestrian interference, including interference
15 from sitting or lying on the sidewalk, and is enforceable without the need for Section 1.

16
17 Section 3 of the original ordinance addresses prohibited panhandling practices, and Section 4
18 of the original ordinance addresses appropriate amendments to the fine schedule. Sections
19 2-5 are renumbered in AO 2011-112(S), for implementation, effective December 22, 2011.

20
21 The vote taken on the Mayor's Sidewalk Ordinance, AO 2011-112 was taken in reliance on
22 specific information requested from the Municipal Attorney, as set out in the excerpt
23 transcribed and attached for ease of reference. Because the effective date of AO 2011-112
24 was December 22, 2011, 30 days after passage and approval by the Assembly on November
25 22, 2011, rescission under 2.30.080.H. is available to "reset" the process, in light of
26 corrections received from the Municipal Attorney, as attached. Corrections from the
27 Municipal Attorney were not timely enough to use notice of reconsideration by the Assembly
28 as a curative tool.

29
30 AO 2011-112(S) is appropriate for introduction upon rescission of action taken by the
31 Assembly on November 22, 2011.

32
33 Respectfully submitted:

34
35 Dick Traini
36 Assembly Member, Section 4

From: Gruenstein, Barbara E.
Sent: Tuesday, November 29, 2011 10:40 AM
To: !MAS Assembly Members
Subject: FW: Safe Sidewalk ordinance - contact with the ACLU
Importance: High

From: Wheeler, Dennis A.
Sent: Tuesday, November 29, 2011 10:39 AM
To: Gruenstein, Barbara E.
Cc: Sullivan, Dan; Erkmann, Sarah A.; Vakalis, George J.; Tucker, Julia
Subject: Safe Sidewalk ordinance - contact with the ACLU

Barbara – please distribute to the Assembly. Thanks

Assembly members – at the last Assembly meeting, in an exchange with Assembly member Traini, I said the safe sidewalk ordinance had been “run by” the ACLU and the ACLU had no objections. This was a poor choice of words. I knew the ACLU had been reviewing the original ordinance since its introduction in July. I believed the ACLU was also aware of the revised version. I also thought at least one assembly member had told me they had shared the ordinance with the ACLU.

In any event, my office did not directly send a copy of the ordinance to the ACLU. My poor choice of words would certainly give the impression that my office had sent the ordinance directly to the ACLU.

It is true the ACLU did not send us any comments, as they have in the past on other ordinances. It also appears the ACLU did not speak to either version of the ordinance during the public hearings.

I understand from recent news stories that the ACLU is concerned about the ordinance. It has been suggested the concern has to do with the hours specified in the ordinance, but I do not know the specifics.

Regular Meeting 11/22/2011:

Item 14.I.

Assembly Member TRAINI: Dennis, since this will end up probably in the court system if it is approved, the ACLU takes this to court, is this defensible in your point of view?

Municipal Attorney WHEELER: Mr. Traini, this ordinance was run by the ACLU.

Assembly Member TRAINI: Did they have any problems with it?

Municipal Attorney WHEELER: They did not have any problems with it. And, that's primarily because we drafted it after a law that was already challenged in court.

Assembly Member TRAINI: Because I'm wondering why ACLU is not here. Normally when something like this comes forward, if they have a problem, they are here to testify. So, I appreciate that. Thank you.