

CLERK'S OFFICE

APPROVED

11-22-11

Submitted by: Chair of the Assembly at the

Request of the Mayor

Prepared by: Dept. of Law

For reading: November 8, 2011

ANCHORAGE, ALASKA

AO No. 2011-112

Date: ON 12-6-11: MR. TRAINI GAVE

NOTICE OF INTENT TO MOVE RESCISSION OF ASSEMBLY ACTION; ON 12-13-11: MOTION TO RESCIND

FAILED

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

1 is supplied by a public agency or by the abutting private property
2 owner;

3 5. Sitting on a public sidewalk within a passenger loading zone
4 while waiting for public or private transportation; or

5 6. Waiting in line to purchase, receive or deliver an item or gain
6 access to an adjacent property, such as waiting to purchase an
7 item from a street vendor, or tickets at a ticket window, or
8 waiting for an establishment to open to receive or deliver goods
9 or services, so long as the person is as far from the traveled
10 roadway as practicable.

11
12 Nothing in any of these exceptions shall be construed to permit any
13 conduct which is prohibited by section 8.30.125, pedestrian
14 interference, or any conduct otherwise prohibited by this code.

15
16 C. No person shall be charged under this section unless the person
17 engages in conduct prohibited by this section after having been notified
18 by a law enforcement officer that the conduct violates this section.

19
20 D. Violation of this section shall be punished by a fine of not more than
21 \$100.00.

22
23 E. As an alternative to the remedies, procedures and penalties provided in
24 this Title and Section 1.45.010, a violation of this section may be
25 charged as a civil violation subject to and prosecuted in accordance
26 with Title 14 and in such case shall be punishable by a civil penalty in
27 accordance with Chapter 14.60.

28
29 **Section 2.** Anchorage Municipal Code is amended by adding a new section
30 8.30.125 to read as follows:

31 **8.30.125 Pedestrian interference.**

32 A. The following definitions apply in this section:

33 1. "Obstruct pedestrian or vehicular traffic" means to walk, stand,
34 sit, lie, or place an object in such a manner as to block passage
35 by another person or a vehicle which such other person or
36 vehicle has a right to make, or to require another person or a
37 driver of a vehicle to take evasive action to avoid physical
38 contact. Acts authorized as an exercise of one's constitutional
39 rights, and acts authorized pursuant to a sidewalk encroachment
40 permit under section 24.30.020, a right-of-way special activity
41 permit under regulation section 9.14.004, or a parade permit
42 under regulation chapter 9.36. shall not constitute obstruction of
43 pedestrian or vehicular traffic.

44 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 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[wh]en 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]

- 1 1. As an alternative to the remedies, procedures and penalties
2 provided in this section and section 1.45.010, a violation of
3 subsection B. may be charged as a civil violation subject to and
4 prosecuted in accordance with Title 14 and in such case shall
5 be punishable by a civil penalty in accordance with
6 chapter 14.60. This alternative is not available for violations of
7 subsection C.
- 8 2. A defendant may offset fines imposed for a violation of
9 subsection B. by voluntary participation in an approved
10 community service program, alcohol, drug or other appropriate
11 rehabilitation program, or job training program, if any such
12 programs are available.
- 13 3. A court imposing fines for a violation of subsection C. may order
14 the defendant to complete an approved community service
15 program; alcohol, drug or other appropriate rehabilitation
16 program; or job training program, if any such programs are
17 available.
- 18 4. For each hour of community service completed, the court or
19 administrative hearing officer shall offset the fine by an amount
20 equal to the current minimum wage required by the Alaska
21 Wage and Hour Act, AS 23.10.
- 22 5. Upon presenting proof of completion of an alcohol, drug, or
23 other appropriate rehabilitation program to the court or
24 administrative hearing officer, [. A]ny fees paid toward
25 rehabilitation treatment shall [MAY] offset any fines imposed [PAID
26 FOR FIRST OR SUBSEQUENT OFFENSES].

(AO No. 2004-109, § 1, 8-17-04)

Section 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>in Downtown Improvement District</u>	<u>up to 100.00</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, 7-1-95; AO No. 95-102, § 1, 4-26-95; AO No. 95-118, § 3, 9-1-95; AO No. 95-

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

24
25 **Section 5.** This ordinance shall become effective thirty (30) days after passage
26 and approval by the Anchorage Assembly.

27
28 PASSED AND APPROVED by the Anchorage Assembly this 22nd day of
29 November, 2011.

30
31
32 
33 Chair of the Assembly

34 ATTEST:

35
36 
37 _____
38 Municipal Clerk

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 618-2011

Meeting Date: November 8, 2011

1 **From:** MAYOR

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

10
11 This ordinance is part of a continuum of methods and tools needed to protect the
12 public. While this ordinance may discourage the use of sidewalks and other public
13 places for sleeping and panhandling that can be associated with homelessness, it
14 was not created in a vacuum. This administration has spearheaded initiatives to
15 address homelessness and expand the community's ability to serve our most
16 vulnerable citizens with care and compassion in a practical and effective approach.
17 In conjunction with this effort, the administration has also implemented measures to
18 police and clean up parks, open spaces and other municipal properties to reduce
19 crime and hazardous conditions associated with illegal camping. The administration
20 seeks to protect the vulnerable from heinous crimes, but also protect the purposes
21 of municipal property, and the safety of people using municipal property.

22
23 The ordinance complements the opening of Karluk Manor, Anchorage's first
24 "Housing First" project enabled by AO 2010-3 allowing this type of conditional use,
25 and the implementation of the Cold Weather Plan for Homeless Persons enacted by
26 AO 2010-46. The administration has recognized a primary solution for the city's
27 homeless population is a greater supply of truly affordable housing and shelter
28 capacity. This ordinance is intended to enable law enforcement officers to
29 discourage misuse of public spaces, especially when available alternatives exist. At
30 the same time, the homeless population may discover the increasing services
31 available to them whether they need employment, housing or addiction services.
32 Groups such as RuralCap, NeighborWorks, the Salvation Army, Volunteers of
33 America and others have received millions of dollars in grants the municipality
34 directed to them and offer compassionate and safe alternatives to illegal camping in
35 parks or on sidewalks, panhandling and other activities that are, to a certain degree,
36 detrimental to the public health, safety and welfare.

37
38 This ordinance furthers the Municipality's significant government interests in
39 providing free, safe passage and use for all citizens and visitors using our downtown
40 sidewalks, city intersections, and other public spaces. It is important to protect the
41 aesthetics and significant economic vitality of the downtown central business
42 district, a hub of the state's valuable tourism industry. The ordinance does not
43 unduly impede an individual's right to exercise First Amendment rights.

1
2 Section 1 adds a new offense prohibiting sitting or lying down on public sidewalks in
3 the Downtown Improvement District during hours when downtown is typically active
4 with vehicle and pedestrian traffic. It exempts reasonable justifications such as a
5 medical condition, disability, or under permits for sidewalk encroachments or special
6 events, or when waiting in a passenger loading zone, such as a bus stop. Before a
7 person can be cited for a violation, they must continue their conduct after receiving
8 a warning that they are violating this new section. This section is modeled on laws
9 from other jurisdictions which have withstood legal challenges.

10
11 Section 2 of the ordinance adds a new offense, pedestrian interference, penalized
12 as a misdemeanor. Pedestrian interference addresses situations where a person
13 intentionally blocks or impedes the travel of others in a substantial way; the
14 language is modeled after an ordinance in the Seattle Municipal Code which was
15 upheld in court. Adoption of this offense provides another tool for protecting the
16 public convenience and safety in our increasingly urban city, without unduly
17 burdening those who seek to peaceably exercise their First Amendment rights.

18
19 Section 3 amends the existing panhandling ordinance to add prohibitions on
20 panhandling at nighttime and at anytime within the Downtown Improvement District.
21 It is also restructured to make it easier for peace officers to identify and cite the
22 specific conduct prohibited, revises the penalties section so a civil fine can be
23 imposed in lieu of a criminal citation, and is amenable to disposition by the
24 administrative hearing officer. Aggressive panhandling, as a more serious offense
25 involving victimization through fear and intimidation tactics, is reclassified to the
26 misdemeanor level.

27
28 This ordinance does not require any increased expenditure, and any revenues are
29 anticipated to be minimal, thus a summary of economic effects is not required.

30
31 **THE ADMINISTRATION RECOMMENDS APPROVAL OF AN ORDINANCE**
32 **AMENDING ANCHORAGE MUNICIPAL CODE TITLE 8 TO ADD NEW**
33 **OFFENSES FOR SITTING OR LYING DOWN ON SIDEWALKS IN THE**
34 **DOWNTOWN IMPROVEMENT DISTRICT AND FOR PEDESTRIAN**
35 **INTERFERENCE, AMENDING SECTION 8.75.170 REGARDING PROHIBITED**
36 **PANHANDLING, AND AMENDING THE FINE SCHEDULE AT SECTION 14.60.030**
37 **ACCORDINGLY.**

38
39 Prepared by: Dean T. Gates, Asst. Municipal Attorney
40 Approved by: Dennis A. Wheeler, Municipal Attorney
41 Concur: George J. Vakalis, Municipal Manager
42 Respectfully submitted: Daniel A. Sullivan, Mayor
43

Submitted by: ASSEMBLY MEMBER TRAINI
Prepared by: Assembly Counsel
For reading: December 6, 2011

NOTICE OF INTENT TO MOVE FOR RESCISSION OF ASSEMBLY ACTION

I hereby give notice of intent to move for rescission of Assembly action, taken on November 22, 2011, approving the "Sidewalk Ordinance", AO 2011-112:

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

I give this notice of intent, as provided in the Rules of Procedure for the Assembly, AMC 2.30.080.H, that the motion to rescind the Assembly's November 22, 2011 action approving AO 2011-112 is to be made by me for consideration by the Assembly at its next meeting, scheduled for December 13, 2011.