

CLERK'S OFFICE

APPROVED

ANCHORAGE, ALASKA

Date: 12-16-08 AO No. 2008-122

1 AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS
2 9.28.020 AND 9.28.022 TO COMPLY WITH STATE LAW REGARDING IGNITION
3 INTERLOCK DEVICES, EFFECTIVE JANUARY 1, 2009.
4

5
6 THE ANCHORAGE ASSEMBLY ORDAINS:

7
8 **Section 1.** Anchorage Municipal Code section 9.28.020C. is amended to read as
9 follows (*the remainder of the section is not affected and therefore not set out*):

10
11 **9.28.020 Operating under the influence--Prohibited; sentencing.**

12 *** **

13
14 C. Upon conviction for driving under the influence under this section:

15 *** **

16
17 4. If the offense involved driving a motor vehicle for which a driver's
18 license is required: [.]

19 a. The person's driver's license shall be revoked in
20 accordance with AS 28.15.181; and [.]

21 b. In addition, the court shall order, and a person convicted
22 under this section shall undertake, for a term specified by
23 the court, that program of alcohol education or
24 rehabilitation that the court, after consideration of any
25 information compiled under subsection D of this section,
26 finds appropriate; and

27 c. The Court shall impose ignition interlock requirements
28 upon a person convicted under this section as required
29 under Title 28 of the Alaska Statutes.

30 *** **

31
32 (AO No. 267-76; AO No. 78-72; AO No. 78-230(S); AO No. 80-122; AO No.
33 81-75; AO No. 82-126; AO No. 83-168, 10-17-83; AO No. 89-52; AO No. 91-
34 56(S); AO No. 91-190; AO No. 94-68(S), § 11, 8-11-94; AO No. 95-84(S-1), §§
35 1--9, 4-27-95; AO No. 95-163(S), §§ 1--5, 8-8-95; AO No. 97-72, § 1, 6-10-97;
36 AO No. 97-87, § 1, 6-3-97; AO No. 2001-51, § 1, 2-27-01; AO No. 2001-150, §
37 1, 8-28-01; AO No. 2001-145(S-1), § 6, 12-11-01; AO No. 2002-125, § 2, 8-
38 20-02; AO No. 2003-73, §§ 8, 9, 4-22-03; AO No. 2003-106, §§ 3, 4, 7-1-03;
39 AO No. 2006-152, §§ 1, 2, 1-1-07)

40
41 **Section 2.** Anchorage Municipal Code section 9.28.022D. is amended to read as
42 follows (*the remainder of the section is not affected and therefore not set out*):

43
44 9.28.022 Driving under the influence--Refusal to submit to chemical tests.
45

*** **

D. Upon conviction for refusal to submit to chemical tests under subsection C of this section:

*** **

4. If the offense involved driving a motor vehicle for which a driver's license is required: [,]

a. The person's driver's license shall be revoked in accordance with AS 28.15.181; and [.]

b. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under subsection H of this section, finds appropriate; and

c. The Court shall impose ignition interlock requirements upon a person convicted under this section as required under Title 28 of the Alaska Statutes.

*** **

(AO No. 82-126; AO No. 83-168, 10-17-83; AO No. 91-56(S); AO No. 91-190; AO No. 95-84(S-1), §§ 10--17, 4-27-95; AO No. 95-163(S), §§ 6--9, 8-8-95; AO No. 97-87, § 2, 6-3-97; AO No. 2001-51, § 1, 2-27-01; AO No. 2002-125, § 4, 8-20-02; AO No. 2003-73, §§ 10, 11, 4-22-03; AO No. 2003-106, §§ 5, 6, 7-1-03).

Section 3. This ordinance shall be effective on January 1, 2009.

PASSED AND APPROVED by the Anchorage Assembly this 16th day of December, 2008.


Chair of the Assembly

ATTEST:


Municipal Clerk

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects -- General Government

AO Number: 2008-122

Title: **AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE
 SECTIONS 9.28.020 AND 9.28.022 TO COMPLY WITH STATE LAW
 REGARDING IGNITION INTERLOCK DEVICES, EFFECTIVE JANUARY 1,
 2009.**

Sponsor:
 Preparing Agency: Department of Law
 Others Impacted:

CHANGES IN EXPENDITURES AND REVENUES:	(In Thousands of Dollars)				
	FY09	FY10	FY11	FY12	FY13
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:					
CAPITAL:					
POSITIONS: FT/PT and Temp					

PUBLIC SECTOR ECONOMIC EFFECTS:
 Amendments to code to comply with state law; no public sector economic effects.

PRIVATE SECTOR ECONOMIC EFFECTS:
 Amendments to code to comply with state law; no private sector economic effects.

Prepared by: Department of Law

Telephone:

MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM

No. AM 752-2008

Meeting Date: December 5, 2008

1 **From: ASSEMBLY MEMBER JOHNSTON**

2
3 **Subject: AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL**
4 **CODE SECTIONS 9.28.020 AND 9.28.022 TO COMPLY WITH**
5 **STATE LAW REGARDING IGNITION INTERLOCK DEVICES,**
6 **EFFECTIVE JANUARY 1, 2009.**
7
8

9 The purpose of this ordinance is to comply with the requirements of State Law
10 regarding ignition interlock devices. Earlier this year, the state legislature
11 passed House Bill (HB) 19, containing a number of provisions concerning
12 ignition interlock devices. Ignition interlock devices are alcohol breath testing
13 devices designed to be installed on motor vehicles to prevent the engine from
14 starting if alcohol is detected. (A copy of HB 19 is attached hereto and
15 incorporated herein by reference.)
16

17 HB 19 includes provisions requiring use in prosecutions under the state DUI
18 and Refusal to Submit to a Chemical Test statutes. It also requires municipal
19 ordinances to impose similar requirements. The ordinance brings Anchorage
20 Municipal Code into compliance with the requirements under state law.
21

22 This ordinance does not delineate the specific requirements for ignition
23 interlock devices. Under the amendments to the state statutes, ignition
24 interlock devices are required for specific periods of time, depending on the
25 offender's prior record. For example, a first offender must install an ignition
26 interlock for 12 months, and a second offender for 24 months. However, the
27 provision of HB 19 making it mandatory for Municipalities requires the
28 ordinance must "impose ... ignition interlock device requirements under this
29 title" (Alaska Statutes, Title 28). Therefore, this ordinance incorporates the
30 requirements of Alaska Statutes Title 28 by reference, rather than setting
31 them forth in detail.
32

33 The Department of Law prefers this approach of incorporating state law by
34 reference, allowing compliance with HB 19, without the requirement to revisit
35 the code provisions in the event the legislature amends or changes the
36 statutory provisions in the future.
37

1 Ignition interlock devices are a useful tool for the prevention of drunk driving.
2 The Municipal Prosecutor's Office believes this tool will assist in the reduction
3 of drunk driving and the threats to public safety that drunk driving poses.

4
5 **THE ADMINISTRATION RECOMMENDS APPROVAL AN ORDINANCE**
6 **AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS 9.28.020 AND**
7 **9.28.022 TO COMPLY WITH STATE LAW REGARDING IGNITION**
8 **INTERLOCK DEVICES, EFFECTIVE JANUARY 1, 2009.**

9
10 Prepared by: Department of Law
11 Approved by: James N. Reeves, Municipal Attorney

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13
14
15
16
17 Respectfully submitted,
18 Jennifer Johnston
19 Assembly Member

20
21 Attachments: House Bill 19 (2008)



LAWS OF ALASKA

2008

Source

SCS CSHB 19(JUD)(efd am S)

Chapter No.

AN ACT

Relating to ignition interlock devices; to limited driver's license privileges; to ignition interlock limited driver's license privileges; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to ignition interlock devices; to limited driver's license privileges; to ignition
2 interlock limited driver's license privileges; and providing for an effective date.

3
4 * Section 1. AS 11.76.140 is amended to read:

5 **Sec. 11.76.140. Avoidance of ignition interlock device.** (a) A person
6 **commits the crime of avoidance of ignition interlock device if the person** [MAY
7 NOT] knowingly

8 (1) **circumvents** [CIRCUMVENT] or **tampers** [TAMPER] with an
9 ignition interlock device in a manner intended to allow a person on probation **under**
10 **AS 12.55.102, with a condition of sentence** under AS 12.55.102, **or who has an**
11 **ignition interlock limited license** to avoid using the device; [OR]

12 (2) **rents** [RENT, LOAN, OR LEASE] a motor vehicle to a person
13 **and with criminal negligence disregards the fact that the person is** on probation
14 **under AS 12.55.102, has a condition of sentence** under AS 12.55.102, **or has an**

1 ignition interlock limited license, unless the vehicle is equipped with an ignition
2 interlock device described in AS 12.55.102; or

3 (3) loans a motor vehicle to a person and knowingly disregards the
4 fact that the person is on probation under AS 12.55.102, has a condition of
5 sentence under AS 12.55.102, or has an ignition interlock limited license, unless
6 the vehicle is equipped with an ignition interlock device described in
7 AS 12.55.102.

8 (b) Avoidance of ignition interlock device

9 (1) under (a)(1) of this section is a class A misdemeanor;

10 (2) under (a)(2) or (3) of this section is [NOTWITHSTANDING
11 AS 11.81.250, A PERSON CONVICTED OF VIOLATING THIS SECTION IS
12 GUILTY OF] a class B misdemeanor and is punishable by a term of imprisonment
13 of not more than [. THE MAXIMUM TERM OF IMPRISONMENT THAT MAY
14 BE IMPOSED IS] 30 days and a [THE MAXIMUM] fine of not more than [THAT
15 MAY BE IMPOSED IS] \$500.

16 * **Sec. 2.** AS 28.01.010 is amended by adding a new subsection to read:

17 (j) A court may not enforce a municipal ordinance prescribing a penalty for
18 driving while under the influence of an alcoholic beverage, inhalant, or controlled
19 substance or refusal to submit to a chemical test unless that ordinance imposes ignition
20 interlock device requirements under this title.

21 * **Sec. 3.** AS 28.15.201(d) is repealed and reenacted to read:

22 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain
23 a license under AS 28.15.181(c), or the department when revoking a driver's license,
24 privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant
25 limited license privileges if

26 (1) the revocation was for a misdemeanor conviction under
27 AS 28.35.030 or a similar municipal ordinance and not for a violation of
28 AS 28.35.032;

29 (2) the person

30 (A) has not been previously convicted and the limited license is
31 not granted during the first 30 days of the period of revocation; or

1 (B) has been previously convicted and the limited license is not
2 granted during the first 90 days of the period of revocation;

3 (3) the court or department requires the person to use an ignition
4 interlock device during the period of the limited license whenever the person operates
5 a motor vehicle in a community not included in the list published by the department
6 under AS 28.22.011(b) and, when applicable,

7 (A) the person provides proof of installation of the ignition
8 interlock device on every vehicle the person operates;

9 (B) the person signs an affidavit acknowledging that

10 (i) operation by the person of a vehicle that is not
11 equipped with an ignition interlock device is subject to penalties for
12 driving with a revoked license;

13 (ii) circumventing or tampering with the ignition
14 interlock device is a class A misdemeanor; and

15 (iii) the person is required to maintain the ignition
16 interlock device throughout the period of the limited license, to keep
17 up-to-date records in each vehicle showing that any required service
18 and calibration is current, and to produce those records immediately on
19 request;

20 (4) the person is enrolled in and is in compliance with or has
21 successfully completed the alcoholism screening, evaluation, referral, and program
22 requirements of the Department of Health and Social Services under AS 28.35.030(h);

23 (5) the person provides proof of insurance as required by AS 28.20.230
24 and 28.20.240; and

25 (6) the person has not previously been convicted of violating the
26 limitations of an ignition interlock limited license or been convicted of violating the
27 provisions of AS 28.35.030 or 28.35.032 while on probation for a violation of those
28 sections.

29 * **Sec. 4.** AS 28.15.201 is amended by adding a new subsection to read:

30 (f) If a person is required to use an ignition interlock device as a condition of a
31 limited license under this section and the device prevents a vehicle from being

1 operated, the person has not violated the requirements of the limited license by
2 attempting to operate the vehicle.

3 * Sec. 5. AS 28.35.030(b) is amended to read:

4 (b) Except as provided under (n) of this section, driving while under the
5 influence of an alcoholic beverage, inhalant, or controlled substance is a class A
6 misdemeanor. Upon conviction,

7 (1) the court shall impose a minimum sentence of imprisonment of

8 (A) not less than 72 consecutive hours, require the person to
9 use an ignition interlock device after the person regains the privilege,
10 including any limited privilege, to operate a motor vehicle for a minimum
11 of 12 months during the period of probation, and impose a fine of not less
12 than \$1,500 if the person has not been previously convicted;

13 (B) not less than 20 days, require the person to use an
14 ignition interlock device after the person regains the privilege, including
15 any limited privilege, to operate a motor vehicle for a minimum of 24
16 months during the period of probation, and impose a fine of not less than
17 \$3,000 if the person has been previously convicted once;

18 (C) not less than 60 days, require the person to use an
19 ignition interlock device after the person regains the privilege, including
20 any limited privilege, to operate a motor vehicle for a minimum of 36
21 months during the period of probation, and impose a fine of not less than
22 \$4,000 if the person has been previously convicted twice and is not subject to
23 punishment under (n) of this section;

24 (D) not less than 120 days, require the person to use an
25 ignition interlock device after the person regains the privilege, including
26 any limited privilege, to operate a motor vehicle throughout the period of
27 probation, and impose a fine of not less than \$5,000 if the person has been
28 previously convicted three times and is not subject to punishment under (n) of
29 this section;

30 (E) not less than 240 days, require the person to use an
31 ignition interlock device after the person regains the privilege, including

1 any limited privilege, to operate a motor vehicle throughout the period of
2 probation, and **impose** a fine of not less than \$6,000 if the person has been
3 previously convicted four times and is not subject to punishment under (n) of
4 this section;

5 (F) not less than 360 days, require the person to use an
6 ignition interlock device after the person regains the privilege, including
7 any limited privilege, to operate a motor vehicle throughout the period of
8 probation, and **impose** a fine of not less than \$7,000 if the person has been
9 previously convicted more than four times and is not subject to punishment
10 under (n) of this section;

11 (2) the court may not

12 (A) suspend execution of sentence or grant probation except on
13 condition that the person

14 (i) serve the minimum imprisonment under (1) of this
15 subsection; and

16 (ii) pay the minimum fine required under (1) of this
17 subsection;

18 (B) suspend imposition of sentence;

19 (3) the court shall revoke the person's driver's license, privilege to
20 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
21 motor vehicle, aircraft, or watercraft that was used in commission of the offense be
22 forfeited under AS 28.35.036; and

23 (4) the court may order that the person, while incarcerated or as a
24 condition of probation or parole, take a drug or combination of drugs intended to
25 prevent the consumption of an alcoholic beverage; a condition of probation or parole
26 imposed under this paragraph is in addition to any other condition authorized under
27 another provision of law.

28 * **Sec. 6.** AS 28.35.030(n) is amended to read:

29 (n) A person is guilty of a class C felony if the person is convicted under (a) of
30 this section and either has been previously convicted two or more times since
31 January 1, 1996, and within the 10 years preceding the date of the present offense, or

1 punishment under this subsection or under AS 28.35.032(p) was previously imposed
2 within the last 10 years. For purposes of determining minimum sentences based on
3 previous convictions, the provisions of (t)(4) of this section apply. Upon conviction,
4 the court

5 (1) shall impose a fine of not less than \$10,000, **require the person to**
6 **use an ignition interlock device after the person regains the privilege to operate a**
7 **motor vehicle throughout the period of probation,** and **impose** a minimum sentence
8 of imprisonment of not less than

9 (A) 120 days if the person has been previously convicted twice;

10 (B) 240 days if the person has been previously convicted three
11 times;

12 (C) 360 days if the person has been previously convicted four
13 or more times;

14 (2) may not

15 (A) suspend execution of sentence or grant probation except on
16 condition that the person

17 (i) serve the minimum imprisonment under (1) of this
18 subsection; and

19 (ii) pay the minimum fine required under (1) of this
20 subsection; or

21 (B) suspend imposition of sentence;

22 (3) shall permanently revoke the person's driver's license, privilege to
23 drive, or privilege to obtain a license subject to restoration of the license under (o) of
24 this section;

25 (4) may order that the person, while incarcerated or as a condition of
26 probation or parole, take a drug or combination of drugs, intended to prevent the
27 consumption of an alcoholic beverage; a condition of probation or parole imposed
28 under this paragraph is in addition to any other condition authorized under another
29 provision of law;

30 (5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft,
31 or aircraft used in the commission of the offense, subject to remission under

1 AS 28.35.037; and

2 (6) shall order the department to revoke the registration for any vehicle
3 registered by the department in the name of the person convicted under this
4 subsection; if a person convicted under this subsection is a registered co-owner of a
5 vehicle or is registered as a co-owner under a business name, the department shall
6 reissue the vehicle registration and omit the name of the person convicted under this
7 subsection.

8 * **Sec. 7.** AS 28.35.030 is amended by adding a new subsection to read:

9 (u) Notwithstanding (b), (n), or (r) of this section, the court shall waive the
10 requirement of the use of an ignition interlock device when a person operates a motor
11 vehicle in a community included on the list published by the department under
12 AS 28.22.011(b).

13 * **Sec. 8.** AS 28.35.032(g) is amended to read:

14 (g) Upon conviction under this section,

15 (1) the court shall impose a minimum sentence of imprisonment of

16 (A) not less than 72 consecutive hours, **require the person to**
17 **use an ignition interlock device after the person regains the privilege to**
18 **operate a motor vehicle for a minimum of 12 months during the period of**
19 **probation,** and **impose** a fine of not less than \$1,500 if the person has not been
20 previously convicted;

21 (B) not less than 20 days, **require the person to use an**
22 **ignition interlock device after the person regains the privilege to operate a**
23 **motor vehicle for a minimum of 24 months during the period of**
24 **probation,** and **impose** a fine of not less than \$3,000 if the person has been
25 previously convicted once;

26 (C) not less than 60 days, **require the person to use an**
27 **ignition interlock device after the person regains the privilege to operate a**
28 **motor vehicle for a minimum of 36 months during the period of**
29 **probation,** and **impose** a fine of not less than \$4,000 if the person has been
30 previously convicted twice and is not subject to punishment under (p) of this
31 section;

1 (D) not less than 120 days, require the person to use an
2 ignition interlock device after the person regains the privilege to operate a
3 motor vehicle throughout the period of probation, and impose a fine of not
4 less than \$5,000 if the person has been previously convicted three times and is
5 not subject to punishment under (p) of this section;

6 (E) not less than 240 days, require the person to use an
7 ignition interlock device after the person regains the privilege to operate a
8 motor vehicle throughout the period of probation, and impose a fine of not
9 less than \$6,000 if the person has been previously convicted four times and is
10 not subject to punishment under (p) of this section;

11 (F) not less than 360 days, require the person to use an
12 ignition interlock device after the person regains the privilege to operate a
13 motor vehicle throughout the period of probation, and impose a fine of not
14 less than \$7,000 if the person has been previously convicted more than four
15 times and is not subject to punishment under (p) of this section;

16 (2) the court may not

17 (A) suspend execution of the sentence required by (1) of this
18 subsection or grant probation, except on condition that the person

19 (i) serve the minimum imprisonment under (1) of this
20 subsection; and

21 (ii) pay the minimum fine required under (1) of this
22 subsection; or

23 (B) suspend imposition of sentence;

24 (3) the court shall revoke the person's driver's license, privilege to
25 drive, or privilege to obtain a license under AS 28.15.181, and may order that the
26 motor vehicle, aircraft, or watercraft that was used in commission of the offense be
27 forfeited under AS 28.35.036;

28 (4) the court may order that the person, while incarcerated or as a
29 condition of probation or parole, take a drug or combination of drugs intended to
30 prevent the consumption of an alcoholic beverage; a condition of probation or parole
31 imposed under this paragraph is in addition to any other condition authorized under

1 another provision of law; and

2 (5) the sentence imposed by the court under this subsection shall run
3 consecutively with any other sentence of imprisonment imposed on the person.

4 * **Sec. 9.** AS 28.35.032(p) is amended to read:

5 (p) A person is guilty of a class C felony if the person is convicted under this
6 section and either has been previously convicted two or more times since January 1,
7 1996, and within the 10 years preceding the date of the present offense, or punishment
8 under this subsection or under AS 28.35.030(n) was previously imposed within the
9 last 10 years. For purposes of determining minimum sentences based on previous
10 convictions, the provisions of AS 28.35.030(t)(4) apply. Upon conviction,

11 (1) the court shall impose a fine of not less than \$10,000, **require the**
12 **person to use an ignition interlock device after the person regains the privilege to**
13 **operate a motor vehicle throughout the period of probation,** and **impose** a
14 minimum sentence of imprisonment of not less than

15 (A) 120 days if the person has been previously convicted twice;

16 (B) 240 days if the person has been previously convicted three
17 times;

18 (C) 360 days if the person has been previously convicted four
19 or more times;

20 (2) the court may not

21 (A) suspend execution of the sentence required by (1) of this
22 subsection or grant probation, except on condition that the person

23 (i) serve the minimum imprisonment under (1) of this
24 subsection; and

25 (ii) pay the minimum fine required under (1) of this
26 subsection; or

27 (B) suspend imposition of sentence;

28 (3) the court shall permanently revoke the person's driver's license,
29 privilege to drive, or privilege to obtain a license subject to restoration under (q) of
30 this section;

31 (4) the court may order that the person, while incarcerated or as a

1 condition of probation or parole, take a drug, or combination of drugs, intended to
2 prevent consumption of an alcoholic beverage; a condition of probation or parole
3 imposed under this paragraph is in addition to any other condition authorized under
4 another provision of law;

5 (5) the sentence imposed by the court under this subsection shall run
6 consecutively with any other sentence of imprisonment imposed on the person;

7 (6) the court shall order forfeiture under AS 28.35.036, of the motor
8 vehicle, aircraft, or watercraft used in the commission of the offense, subject to
9 remission under AS 28.35.037; and

10 (7) the court shall order the department to revoke the registration for
11 any vehicle registered by the department in the name of the person convicted under
12 this subsection; if a person convicted under this subsection is a registered co-owner of
13 a vehicle, the department shall reissue the vehicle registration and omit the name of
14 the person convicted under this subsection.

15 * **Sec. 10.** AS 28.35.032 is amended by adding a new subsection to read:

16 (u) Notwithstanding (g) or (p) of this section, the court shall waive the
17 requirement of the use of an ignition interlock device when a person operates a motor
18 vehicle in a community included on the list published by the department under
19 AS 28.22.011(b).

20 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 TRANSITIONAL PROVISION. A person convicted of a misdemeanor violation of
23 AS 28.35.030 before the effective date of this Act who has a limited license issued under or is
24 eligible to receive a limited license under AS 28.15.201(d), as that subsection read on the day
25 before the effective date of this Act, may continue to use that limited license or may receive a
26 limited license as provided in AS 28.15.201, as that section read on the day before the
27 effective date of this Act, and is subject to penalties for violating the limitations on that
28 license as provided in AS 28.15.291, as that statute read on the day before the effective date
29 of this Act.

30 * **Sec. 12.** This Act takes effect January 1, 2009.