

Submitted by: Chair of the Assembly at the  
Request of the Acting Mayor

Prepared by: Dept. of Law

For reading: May 12, 2009

CLERK'S OFFICE

APPROVED

ANCHORAGE, ALASKA

AO No. 2009-61

Date:

7-7-09

1 AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS  
2 8.65.020, 8.75.160, 14.60.030, 9.28.019, 9.28.020, 9.28.022, AND 9.48.010,  
3 REGARDING PENAL CODE, TRAFFIC LAWS, AND ADMINISTRATIVE  
4 ADJUDICATION OF SHOPLIFTS, TO COMPLY WITH STATE LAW.  
5

6  
7 THE ANCHORAGE ASSEMBLY ORDAINS:  
8

9 **Section 1.** Anchorage Municipal Code section 8.65.020 is amended to read as  
10 follows:  
11

12 **8.65.020      Practicing.**

13  
14 A. It is unlawful for any person to knowingly engage in prostitution or  
15 assignation.  
16

17 B. It is unlawful for any person to perform or request another person to  
18 perform a sexual act, including genital exhibition, exhibition of the  
19 female breasts, the touching of another of the male or female genitalia  
20 or anus, or the touching by another of the female breast in order to  
21 demonstrate a person is not a law enforcement officer.  
22

23 C [B]. Violation of this section shall, upon conviction, be punished by a fine of  
24 not more than \$10,000.00 or imprisonment for not more than one year,  
25 or both such fine and imprisonment.  
26

27 (CAC 8.14.020; AO No. 98-59(S), § 1, 5-19-98; AO No. 2003-73, § 3, 4-22-03)

28 *State law references:* Civil liability for shoplifting, AS 9.68.110; concealment of  
29 merchandise, AS11.46.220.  
30

31  
32 **Section 2.** Anchorage Municipal Code section 8.75.160 is amended to read as  
33 follows:  
34

35 **8.75.160      Shoplifting under \$5.00.**

36  
37 A. *Removal of merchandise.* It is unlawful for any person to take or  
38 remove any merchandise or thing valued at less than \$5.00 from the  
39 premises where such merchandise or thing of value is kept for  
40 purposes of sale, barter or storage without the consent of the owner or  
41 person lawfully entitled to its possession.  
42

43 B. *Concealment of merchandise.* It is unlawful for any person, without  
44 authority, willfully to conceal upon or about his person any merchandise

1 or thing valued at less than \$5.00 upon the premises where such  
2 merchandise or thing of value is kept for the purposes of sale, barter or  
3 storage. Any merchandise or thing of value found concealed upon or  
4 about the person and which has not theretofore been purchased by the  
5 person is prima facie evidence of willful concealment.

6  
7 C. This section shall not apply if the merchandise or thing of value is an  
8 alcoholic beverage, in which case the penalties provided for under  
9 section 8.15.010 B. shall apply.

10  
11 D [C]. "Consent" defined. As used in this section, the term "consent" shall  
12 mean express consent, or consent implied by possession of a sales  
13 ticket, slip or receipt issued for and accompanied by the article of  
14 merchandise or thing of value.

15  
16 E. As an alternative to the remedies, procedures and penalties provided in  
17 this title and section 1.45.010, a violation of this section may be  
18 charged as a civil violation, subject to and prosecuted in accordance  
19 with Title 14 and in such case shall be punishable by a civil penalty in  
20 accordance with chapter 14.60.

21  
22 (GAAB 18.05.040; AO No. 89-52; AO No. 98-59(S), § 1, 5-19-98; AO No.  
23 2003-73, § 3, 4-22-03)

24  
25 **Section 3.** Anchorage Municipal Code section 14.60.030 is amended to read as  
26 follows *(the remainder of the section is not affected and therefore not set out):*

27  
28 **14.60.030 Fine schedule.**

29  
30 The fine schedule under this chapter is as follows:

31 TABLE INSET:

<u>Code Section</u>	<u>Offense</u>	<u>Penalty/Fine</u>
***    ***    ***		
<u>8.75.160</u>	<u>Shoplifting under \$5.00</u>	<u>Up to \$500</u>

32  
33  
34  
35  
36  
37  
38  
39 (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;  
40 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  
41 No. 95-118, § 3, 9-1-95; AO No. 95-163(S), § 21, 8-8-95; AO No. 95-195(S-1), 1-1-96; AO No.  
42 96-51(S-1), § 2, 8-1-96; AO No. 96-96(S-1), § 2, 2-1-97; AO No. 96-126(S), § 3, 10-1-96; AO  
43 No. 96-137(S), § 9, 1-2-97; AO No. 97-88, § 3, 6-3-97; AO No. 97-107, § 3, 11-17-97; AO No.  
44 97-133(S), § 1, 11-11-97; AO No. 98-27(S-1), § 2, 11-11-97; AO No. 98-160, § 2, 12-8-98; AO  
45 No. 99-13(S), 2-9-99; AO No. 99-91(S), § 4, 7-13-99; AO No. 2000-64, § 1, 4-18-00; AO No.  
46 2000-116(S), § 4, 7-18-00; AO No. 2000-127(S), § 2, 10-14-00; AO No. 2000-129(S), § 26, 11-  
47 21-00; AO No. 2001-48, § 1, 3-13-01; AO No. 2001-74(S), § 2, 4-17-01; AO No. 2001-4, § 2, 2-  
48 6-01; AO No. 2001-145(S-1), § 11, 12-11-01; AO No. 2003-68, § 1, 9-30-03; AO No. 2003-97,  
49 § 4, 9-30-03; AO No. 2003-117, § 2, 1-28-03; AO No. 2003-130, § 8, 10-7-03; AO No. 2003-  
50 152S, § 10, 1-1-04; AO No. 2004-1, § 2, 1-1-03; AO No. 2004-99, § 2, 6-22-04; AO No. 2004-  
51 100(S-1), § 6, 1-1-05; AO No. 2004-171, § 1, 1-11-05; AO No. 2005-160, § 9, 11-1-05; AO No.

2005-84(S), § 3, 1-1-06; AO No. 2005-185(S), § 35, 2-28-06; AO No. 2005-124(S-1A), § 33, 4-18-06; AO No. 2006-39, § 6, 4-11-06; AO No. 2006-54, § 1, 5-2-06; AO No. 2006-80, § 1, 6-6-06; AO No. 2007-50, § 4, 4-10-07; AO No. 2007-60, § 4, 11-1-07; AO No. 2007-70, § 3, 5-15-07; AO No. 2008-84(S), § 5, 7-15-08)

**Section 4.** Anchorage Municipal Code section 9.28.019B. is amended as follows:

**9.28.019**      Valid operator's license required.

\*\*\*      \*\*\*      \*\*\*

B.      It is unlawful for any person, with criminal negligence as to the status of that person's license, to:

- 1.      Drive a motor vehicle at a time when that person's driver's license, privilege to drive, or privilege to obtain a license has been canceled, suspended or revoked in this or another jurisdiction; or
- 2.      Drive in violation of a limitation placed upon that person's license or privilege to drive in this or another jurisdiction.

\*\*\*      \*\*\*      \*\*\*

(CAC 9.12.010; AO No. 267 76; AO No. 78-72; AO No. 78-230(S); AO No. 83-168, 10-17-83; AO No. 89-52; AO No. 91-57(S); AO No. 2001-72, § 1, 7-1-02; AO No. 2002-125, § 1, 8-20-02; AO No. 2003-73, §§ 6, 7, 4-22-03; AO No. 2003-106, §§ 1, 2, 7-1-03)

**Section 5.** Anchorage Municipal Code section 9.28.020 C. is amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

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

\*\*\*      \*\*\*      \*\*\*

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

\*\*\*      \*\*\*      \*\*\*

- 3.      The court [MAY NOT]:
  - a.      May not suspend execution of sentence or grant probation except on condition that the person:
    - 1.      Serve the minimum imprisonment under subsection C.1. [OF THIS SUBSECTION]; and
    - 2.      Pay the minimum fine required under subsection C.1.
  - b.      May not suspend imposition of sentence; and
  - c.      The sentence imposed by the Court shall run

1 consecutively with any other sentence of imprisonment  
2 imposed on the person.

3  
4 \*\*\* \*\*

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

13  
14 *Editor's note:* AO No. 97-87 occasioned by 1996 Proposition 3 Initiative  
15 enacting Chapter XXI.

16  
17 *Cross references:* Penal code, Tit. 8; drinking alcoholic beverages while  
18 driving, § 9.36.200; alcoholic beverages, Ch. 10.50.

19  
20 **Section 6.** Anchorage Municipal Code section 9.28.022 D. is amended to read as  
21 follows (*the remainder of the section is not affected and therefore not set out*):

22  
23 **9.28.022** **Driving under the influence--Refusal to submit to chemical**  
24 **tests.**

25  
26 \*\*\* \*\*

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

29  
30 \*\*\* \*\*

31 3. The court [MAY NOT]:

32  
33 a. May not suspend execution of sentence or grant  
34 probation except on condition that the person:

35  
36 1. Serve the minimum imprisonment under  
37 subsection D.1. [OF THIS SECTION]; and

38  
39 2. Pay the minimum fine required under subsection  
40 D.1.

41  
42 b. May not suspend imposition of sentence; and

43  
44 c. The sentence imposed by the Court shall run  
45 consecutively with any other sentence of imprisonment  
46 imposed on the person.

47  
48 \*\*\* \*\*

49 (AO No. 82-126; AO No. 83-168, 10-17-83; AO No. 91-56(S); AO No. 91-190;

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

5  
6 *State law references:* Refusal to submit to chemical test, AS 28.35.032.

7  
8 **Section 7.** Anchorage Municipal Code section 9.48.010 E. is amended to read as  
9 follows:

10  
11 **9.48.010 Penalties.**

12  
13 \*\*\* \*\*

14 E. Any person convicted under Section 9.28.030 shall be punished by  
15 imprisonment of not more than 90 days and a fine not more than  
16 \$1,000.00, or by both such fine and imprisonment [OTHER PROVISIONS  
17 OF THIS SECTION NOTWITHSTANDING, THE PENALTY FOR VIOLATION OF  
18 SECTION 9.28.030 IS A FINE OF \$1,000.00 FOR EACH OFFENSE AND  
19 IMPRISONMENT OF NOT MORE THAN 90 DAYS].

20  
21 \*\*\* \*\*

22 (CAC 9.48.010; AO No. 267-76; AO No. 78-72; AO No. 82-126; AO No. 82-  
23 186(S); AIM 33-83; AO No. 83-168; AO No. 84-60; AO No. 89-52; AO No. 99-  
24 15, § 2, 2-9-99; AO No. 2003-73, § 17, 4-22-03; AO No. 2004-151, § 2, 1-1-  
25 05; AO No. 2006-89(S), § 3, 6-6-06)

26  
27 **Section 8.** This ordinance shall be effective thirty (30) days after passage and  
28 approval by the Assembly.

29  
30 PASSED AND APPROVED by the Anchorage Assembly this 7<sup>th</sup> day of  
31 July, 2009.

32  
33  
34 Debbie Osslander  
35 Chair of the Assembly  
36  
37

38  
39 ATTEST:

40  
41 Salma S. Gustaf  
42 Municipal Clerk  
43  
44

**MUNICIPALITY OF ANCHORAGE**  
**Summary of Economic Effects -- General Government**

AO Number: 2009-61

Title: **AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS 8.65.020, 8.75.160, 14.60.030, 9.28.019, 9.28.020, 9.28.022, AND 9.48.010, REGARDING PENAL CODE, TRAFFIC LAWS, AND ADMINISTRATIVE ADJUDICATION OF SHOPLIFTS, TO COMPLY WITH STATE LAW.**

Sponsor: ACTING MAYOR  
 Preparing Agency: Anchorage Police Department  
 Others Impacted: Dept. of Law; Administrative Hearing Office

<b>CHANGES IN EXPENDITURES AND REVENUES:</b>		(In Thousands of Dollars)				
	FY09	FY10	FY11	FY12	FY 13	
<b>Operating Expenditures</b>						
1000 Personal Services						
2000 Non-Labor						
3900 Contributions						
4000 Debt Service						
<b>TOTAL DIRECT COSTS:</b>	\$ -	\$ -	\$ -	\$ -	\$ -	
Add: 6000 Charges from Others						
Less: 7000 Charges to Others						
<b>FUNCTION COST:</b>	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>REVENUES:</b>						
<b>CAPITAL:</b>						
<b>POSITIONS: FT/PT and Temp</b>						

**PUBLIC SECTOR ECONOMIC EFFECTS:**

There may be a nominal increase in the caseload at the Administrative Hearing Office, but the ordinance is not expected to have significant public sector economic effects.

**PRIVATE SECTOR ECONOMIC EFFECTS:**

The ordinance is not expected to have any significant private sector economic effects.

Prepared by: Captain Bill Miller

Telephone: 786-8558

# MUNICIPALITY OF ANCHORAGE

## ASSEMBLY MEMORANDUM

No. AM 266-2009

Meeting Date: May 12, 2009

1 **From: ACTING MAYOR**

2  
3 **Subject: AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE**  
4 **SECTIONS 8.65.020, 8.75.160, 14.60.030, 9.28.019, 9.28.020,**  
5 **9.28.022, AND 9.48.010, REGARDING PENAL CODE, TRAFFIC**  
6 **LAWS, AND ADMINISTRATIVE ADJUDICATION OF SHOPLIFTS,**  
7 **TO COMPLY WITH STATE LAW.**  
8

9 This ordinance cleans up traffic and criminal code provisions, bringing them in line  
10 with state statute and clarifying sentencing provisions for the local judiciary.  
11

### 12 **Section 1**

13 This provision amends section 8.65.020, enhancing enforcement of prostitution  
14 laws. It is common practice among prostitutes in Anchorage to ask the customer  
15 "prove" he or she is not a law enforcement officer by exhibiting genitalia, permitting  
16 the prostitute to touch the officer's genitalia, or to touch the prostitute's genitalia or  
17 female breast. This raises serious concerns among the detectives charged with the  
18 responsibility of enforcing such laws, specifically the possibility of the spread of  
19 disease.  
20

### 21 **Sections 2 and 3**

22 These provisions amend Anchorage Municipal Code sections 8.75.160 and  
23 14.30.060, updating the code and alleviating pressures caused by case load  
24 increases.  
25

26 The other purpose of the proposed amendment is to provide a practical mechanism  
27 for prosecution of minor shoplifts. All prosecuting agencies screen cases sent to  
28 them by law enforcement. Screening is a two step process: First, the case is  
29 reviewed to determine whether there is evidence to support the elements of the  
30 offense. Second, the discretionary decision whether expenditure of public  
31 resources is appropriate. Less serious cases are often declined as disproportionate  
32 to resources, and as case loads increase in relation to resources, such cases are  
33 more frequently declined.  
34

35 Case loads in the Municipal Prosecutor's Office (MPO) steadily increased in recent  
36 years as the number of Officers at APD increased. The number of cases referred to  
37 the MPO in 2008 was 10% higher than the number in 2007. By early February  
38 2009, the number was about 150 more than the number of cases received as of the  
39 same date in 2008. Under these circumstances, shoplifts involving small amounts  
40 are very likely to be declined even more often.  
41

1 By reducing the fine to \$500.00, the amendment provides for a more expeditious  
2 and less costly means of dealing with such cases. Specifically, the cases either go  
3 before the Administrative Hearing Officer under Title 14, or are filed in state court as  
4 minor offenses. In either case, the defendant is not entitled to appointed counsel or  
5 a jury trial. Moreover, defendants who fail to take any action on their cases are  
6 subject to default procedures, under the minor offense rules in District Court.

7  
8 An earlier draft of this amendment raised objections if applied to thefts of alcoholic  
9 beverages. This objection has merit, given the public safety ramifications of the  
10 consumption of alcoholic beverages. Accordingly, theft of alcoholic beverages is  
11 specifically excluded from this amendment.

12  
13 An additional objection was raised concerning repeat offenders. There is again,  
14 some merit to the objection. However, for very serious repeat offenders, there are  
15 provisions under state law for felony penalties; offenders meeting the criteria under  
16 the state statute may be prosecuted by the state with potential penalties far greater  
17 than those imposed under Municipal ordinance.

18  
19 **Section 4**

20 This provision inserts language to clarify the applicable state of mind. Under the  
21 corresponding state statute, the required state of mind is criminal negligence. Until  
22 fairly recently, it had been presumed that the rulings interpreting the state statute  
23 applied to the Municipal ordinance as well. However, the appellate court more  
24 recently interpreted the Municipal Code to require criminal recklessness, rather than  
25 criminal negligence. Criminal recklessness is a higher mental state, and may make  
26 a case more difficult to prove. Criminal negligence is a more appropriate mental  
27 state for this offense, since the driver bears a responsibility to ensure that his or her  
28 license is valid before driving a motor vehicle.

29  
30 **Sections 5 and 6**

31 These provisions amend sections 9.28.020 and 9.28.022 regarding sentencing.  
32 The purpose of these amendments is to amend the ordinance to comport with state  
33 law.

34  
35 **Section 7**

36 This provision rewrites section 9.48.010 E. to structure it similar to other  
37 subsections. Substantively, this provision permits the court to impose a fine of less  
38 than \$1000.00 and to suspend the fine.

39  
40 The mandatory \$1000.00 fine was enacted in 2006. The experience of the  
41 prosecutor's office suggests the mandatory fine has not worked well, as it tends to  
42 discourage defendants who would otherwise plead guilty or no contest at  
43 arraignment to plead not guilty and ask for appointment of counsel. Since the  
44 Municipality pays for appointed counsel, this increases costs without an increase in  
45 the effectiveness of enforcement. In addition, many cases otherwise resolved at  
46 arraignment are instead set for trial, increasing the workload for trial attorneys and  
47 for staff. Since the Prosecutor's workload continues to increase, any incremental  
48 increase in the number of cases going to the trial attorneys is a matter of serious  
49 concern.



1 Secondly, the offense in question is driving without insurance. Imposition of a  
2 \$1000.00 fine decreases the funds defendants have available for the purpose of  
3 purchasing insurance.  
4

5 **THE ADMINISTRATION RECOMMENDS APPROVAL OF AN ORDINANCE**  
6 **AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS 8.65.020, 8.75.160,**  
7 **14.60.030, 9.28.019, 9.28.020, 9.28.022, AND 9.48.010, REGARDING PENAL**  
8 **CODE, TRAFFIC LAWS, AND ADMINISTRATIVE ADJUDICATION OF**  
9 **SHOPLIFTS, TO COMPLY WITH STATE LAW.**

10  
11 Prepared by: Department of Law  
12 Approved by: Rob Heun, Chief, Anchorage Police Department  
13 Concur: James N. Reeves, Municipal Attorney  
14 Concur: Michael K. Abbott, Municipal Manager  
15 Respectfully submitted, Matt Claman, Acting Mayor  
16

**Content ID:** 007639  
**Type:** Ordinance - AO  
**Title:** AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS 8.65.020, 8.75.160, 14.60.030, 9.28.019, 9.28.020, 9.28.022, AND 9.48.010, REGARDING PENAL CODE, TRAFFIC LAWS, AND ADMINISTRATIVE ADJUDICATION OF SHOPLIFTS, TO COMPLY WITH STATE LAW  
**Author:** maglaquijp  
**Initiating Dept:** APD  
**Description:** Ordinance Amending AMC 8.65.020, 8.75.160, 14.60.030, 9.28.019, 9.28.020, 9.28.022 and 9.48.010  
**Date Prepared:** 4/17/09 8:32 AM  
**Assembly Meeting Date:** 5/12/09  
**Public Hearing Date:** ~~5/20/09~~ 6/9/09

<b>Workflow Name</b>	<b>Action Date</b>	<b>Action</b>	<b>User</b>	<b>Security Group</b>	<b>Content ID</b>
Clerk_Admin_SubWorkflow	4/30/09 1:46 PM	Exit	Joy Maglaqui	Public	007639
MuniMgrCoord_SubWorkflow	4/30/09 1:46 PM	Approve	Joy Maglaqui	Public	007639
MuniMgrCoord_SubWorkflow	4/30/09 1:42 PM	Checkin	Joy Maglaqui	Public	007639
MuniManager_SubWorkflow	4/29/09 8:30 PM	Approve	Michael Abbott	Public	007639
Legal_SubWorkflow	4/28/09 2:49 PM	Approve	Rhonda Westover	Public	007639
Finance_SubWorkflow	4/28/09 2:36 PM	Approve	Sharon Weddleton	Public	007639
OMB_SubWorkflow	4/27/09 4:35 PM	Approve	Wanda Phillips	Public	007639
APD_SubWorkflow	4/27/09 8:50 AM	Approve	Rob Heun	Public	007639
AllOrdinanceWorkflow	4/17/09 8:33 AM	Checkin	Stephen Miko	Public	007639