

CLERK'S OFFICE
AMENDED AND APPROVED

Submitted by: Assembly member Selkregg
Prepared by: Department of Law
For reading: October 27, 2009

Date: 11-17-09

ANCHORAGE, ALASKA
AO No. 2009-71(S)

AN ORDINANCE REPEALING AND RE-ENACTING ANCHORAGE MUNICIPAL CODE CHAPTER 8.80 REGARDING FEES FOR EXCESSIVE POLICE RESPONSES.

WHEREAS, Alaska Statute 29.35.125 authorizes municipalities to impose a fee on the owner of a residential property for excessive police responses to the property within a calendar year;

WHEREAS, the Anchorage Assembly passed an ordinance, AO 2002-144(S-1), under this authority enacting chapter 8.80 of the Anchorage Municipal Code;

WHEREAS, the Anchorage Police Department has successfully implemented the ordinance and succeeded in holding many residential property owners liable for excessive police responses or in effectuating appropriate corrective action; and

WHEREAS, the Assembly finds it is appropriate, equitable, and in the public interest to expand the scope of the ordinance to extend liability for excessive police responses to owners of all types of property within the municipality, and tenants of units where the number of police response are excessive; now therefore

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code chapter 8.80 is hereby repealed in its entirety. In accordance with AMC section 1.15.050 B., the complete existing text of the affected chapter is attached hereto as **Exhibit A**.

Section 2. Anchorage Municipal Code chapter 8.80 is re-enacted to read as follows:

Chapter 8.80 FEES FOR EXCESSIVE POLICE RESPONSES

- 8.80.010 Definitions.
- 8.80.020 Fee for excessive police response.
- 8.80.030 Notice to liable persons.
- 8.80.040 Appropriate corrective action.
- 8.80.050 Lien on property.
- 8.80.060 Appeal rights.

State law references: Fees for police protection services, AS 29.35.125.

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3 **8.80.010 Definitions.**
4

5 As used in Chapter 8.80:

6
7 *Commercial property* means an individual parcel, tract or lot shown on the
8 most recent plat of record that is not a residential property.

9
10 *Commercial unit* means an area within a commercial property that is readily
11 identifiable by visual inspection as an area used by a single business or
12 commercial enterprise.

13
14 *Dwelling unit* means a structure or portion thereof providing independent and
15 complete cooking, living, sleeping, and toilet facilities for a person or group of
16 persons living as a single housekeeping unit.

17
18 *Excessive police response* means:

- 19
20 1. For a residential property, each police response in excess of
21 eight to a dwelling unit in a calendar year.
22
23 2. For a commercial property, each police response in excess of
24 100 to a commercial unit in a calendar year.
25

26 *Mobile home* means a detached single dwelling unit fabricated at a factory and
27 capable of being transported to location of use on its own chassis and wheels,
28 identified by a model number and serial number by its manufacturer, and
29 designed primarily for placement on a non-permanent foundation.

30
31 *Mobile home park* means any parcel or adjacent parcels of land in the same
32 ownership which are managed for occupancy by more than two mobile homes.
33 The term does not include tourist facilities for travel trailers or campers.

34
35 *Owner*, when used in reference to a property, means the record owner of the
36 property as shown in the real property tax records of the municipality.

37
38 *Person* means any individual, or any business or non-business association
39 recognized by law, whether or not organized for profit.

40
41 *Police response* means one or more police officers goes to a property in
42 response to a call for assistance, a complaint, an emergency, a potential
43 emergency, or a reasonable suspicion of unlawful activity witnessed by a
44 police officer, **and any response determined by a sergeant or higher**
45 **ranking police officer to be related to activities on the property premises**
46 **and reasonably preventable**; however, the term "police response" does not
47 include a response to:
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1. Receipt of false information as defined in Section 8.30.050, unless the false information was provided by an occupant or owner of the property;
2. A false alarm as defined in Section 8.40.010, unless the false alarm was caused, permitted or allowed by an occupant or owner of the property in violation of Section 8.40.020;
3. A call involving potential child neglect, potential domestic violence as defined in AS 18.66.990, or potential stalking under AS 11.41.260 or 11.41.270;
4. A report of a sexual assault as defined in AS 11.41.410 -.427;
[or]
5. A medical emergency for serious bodily injury or death;
- 6. A call from the tenant or owner of commercial property used as a retail store for police assistance with:**
 - a. Theft or attempted theft from the retailer, or**
 - b. A report of the presence or identification of a person under state or federal warrant; or**
- 7. A call from the tenant or owner of commercial property used as a licensed premises under authorization of the Alcoholic Beverage Control Board, for police assistance with law enforcement matters including:**
 - a. A minor seeking unlawful admittance or service,**
 - b. An inebriated person seeking admittance or service, [OR]**
 - c. A report of the presence or identification of a person under state or federal warrant, or[.]**
 - d. An inebriated person preparing to operate a motor vehicle upon leaving the premises.**

Residential property means an individual parcel, tract or lot shown on the most recent plat of record containing one or more dwelling units, or a mobile home.

(AO No. 2002-144(S-1), § 1, 12-17-02)

8.80.020 Fee for excessive police response.

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3 A. Subject to subsection B., the owner of a property and the tenant of a
4 unit thereon shall jointly pay the Municipality a fee of \$500.00 per
5 excessive police response to the dwelling unit or commercial unit
6 during a calendar year.
7
8 B. A person is exempt from liability for the fee established by
9 subsection A. if:
10
11 1. The person is a federal, state, or local government agency;
12
13 2. The property or unit responded to is used exclusively for
14 nonprofit religious, charitable, cemetery, hospital, or educational
15 purposes;
16
17 3. The municipality has not provided notice to the person in writing
18 as provided in Section 8.80.030; ~~or~~
19
20 4. Any person has taken appropriate corrective action and given
21 written notice to police of the action as required by Section
22 8.80.040; or
23
24 **5. The owner or tenant of the commercial property or unit**
25 **responded to has entered a current written agreement with**
26 **the Anchorage Police Department to actively participate in a**
27 **public safety committee of a local community council**
28 **established under chapter 2.40, or in an approved plan to**
29 **deal with criminal matters or participate in other public**
30 **safety activities in the area.**
31
32 C. If a property has more than one owner, all owners shall be jointly liable,
33 with the tenant, for any fee imposed under this section. Actual notice to
34 one owner creates a rebuttable presumption of actual notice to all other
35 owners.
36
37 D. For residential property owned as a condominium, a fee based on
38 excessive police responses to a single dwelling unit shall be assessed
39 against the owner of the dwelling unit, jointly with the tenant.
40
41 E. A tenant shall not be liable for the fee if the tenant's conduct did not
42 require the police response and the tenant's right to possession
43 commenced on a date subsequent to the date of the first police
44 response that is counted for purposes of the fee imposed under this
45 chapter.
46
47 F. If the unit requiring excessive police responses is a mobile home
48 located in a mobile home park, the fee may not be imposed on the

1 owner or operator of the mobile home park, unless the owner's or
2 operator's conduct required the excessive police response. The fee
3 may be imposed jointly on the owner and tenant of the mobile home.
4

5 G. If a sergeant or higher ranking official of the police department
6 determines appropriate corrective action was taken with respect to a
7 specific unit, the count of police responses to the unit shall reset to
8 zero, effective the date of the determination. After resetting, all
9 provisions in this chapter referring to a "calendar year" shall mean
10 "remainder of the calendar year beginning from the date previous
11 corrective action was taken."
12

13 H. The fee may be collected in any lawful manner, including bringing an
14 action in court for a personal judgment against any one or more of the
15 persons liable.
16

17 I. An owner or tenant liable for a fee under this chapter may bring an
18 action in court against a person whose conduct required the excessive
19 police response to recover the amount of the fee and related costs. An
20 owner or tenant shall not be granted any extension of time or
21 continuance to pay the fee based on a pending action against a third
22 party.
23

24 **J. The Municipality will provide a courtesy notice in writing to the**
25 **owner or tenant of a commercial property or commercial unit**
26 **when the total number of police responses exceeds 80 in a**
27 **calendar year. Notice may be by mail and need not be certified.**
28 **Failure to provide notice under this subsection shall not prevent**
29 **the assessment of fees under this chapter.**
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31 (AO No. 2002-144(S-1), § 1, 12-17-02)
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34 **8.80.030 Notice to liable persons.**
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36 A. The municipality may notify the owner and tenant of a property in
37 writing when the number of police responses in the current calendar
38 year to a single dwelling unit or commercial unit in a property equals
39 the number in section 8.80.010 under "Excessive police responses" for
40 that type of property.
41

42 B. A notice under this section shall be given in a manner reasonably
43 calculated, under all the circumstances, to provide actual notice to the
44 person of the potential liability for the fee. At a minimum, the notice
45 shall be sent by certified mail, return receipt requested, to the mailing
46 address of the person as shown on the municipality's real property tax
47 records. If the mailed notice is returned refused for signature by the
48 recipient, actual notice shall be conclusively presumed on the date

1 refused. If the mailed notice is returned unclaimed or undeliverable,
2 the municipality shall accomplish notice by another method and attest
3 to the date notice is accomplished by affidavit or in a police report.
4 Notice may be accomplished by any lawful manner.
5

6 C. The notice addressed to an owner or tenant shall:

- 7
- 8 1. Identify the property that is the subject of the notice by street
9 address and legal description, and, if the property has multiple
10 units, identify the dwelling unit or commercial unit;
 - 11 2. State the number of police responses in the calendar year to
12 date and state additional police responses to the unit or property
13 may result in imposition of fees under this chapter;
 - 14 3. State the person shall be liable for a fee for each excessive
15 police response to the property during the calendar year, unless,
16 within 30 days, any person takes appropriate corrective action
17 promptly and gives written notice to the Anchorage Police
18 Department of the action taken;
 - 19 4. State the amount of the fee per excessive police response; and
20
 - 21 5. State the name and telephone number of a representative of the
22 Anchorage Police Department to contact concerning the notice.
23
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26
27 (AO No. 2002-144(S-1), § 1, 12-17-02)
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30 **8.80.040** **Appropriate corrective action.**

- 31
- 32 A. An owner or tenant of a property shall have 30 days from the date
33 notice is accomplished, as required under section 8.80.030, to promptly
34 take appropriate corrective action. Appropriate corrective action is
35 action reasonably expected to correct the cause of the police
36 responses to the property. Police officers holding the rank of sergeant
37 or higher are authorized to determine whether corrective action is
38 appropriate under the circumstances. The officer's determination shall
39 be in writing and issued within five days of receipt of the person's
40 written notice of the action taken. Should the officer determine the
41 action taken is not appropriate corrective action, the officer shall
42 explain the reasons and the person shall have ten days from the date
43 of the determination to take appropriate corrective action. The ten-day
44 extension shall be provided only once in a calendar year for each unit
45 receiving excessive police responses. Examples of appropriate
46 corrective action, subject to a police officer's determination whether it is
47 appropriate, may include, without limitation:
48

- 1 1. Written notice to quit under AS 09.45.100--09.45.110;
- 2
- 3 2. Eviction notice served on the tenant or lessee requiring vacation
- 4 of the premises within thirty days or less;
- 5
- 6 3. Obtaining a restraining order, if appropriate;
- 7
- 8 4. Installation or implementation of new or additional security
- 9 measures; or
- 10
- 11 5. Action recommended by the Anchorage Police Department in
- 12 writing and implemented to the satisfaction of a police officer the
- 13 rank of sergeant or higher.
- 14
- 15 B. Appropriate corrective action does not include:
- 16
- 17 1. Relocating a tenant or lessee of a unit to a different unit on the
- 18 same property, unless a police officer the rank of sergeant or
- 19 higher determines the relocation is appropriate. If a person is
- 20 relocated, the municipality may transfer the number of police
- 21 responses from the former unit to the new unit.
- 22
- 23 2. Communicating only orally with the person causing the police
- 24 responses.
- 25
- 26 C. No fee may be imposed for additional police responses to the unit that
- 27 is the subject of the notice during the 30-day period allowed under
- 28 subsection A. if any person takes appropriate corrective action and
- 29 gives written notice to the Anchorage Police Department of the action
- 30 taken during the 30-day period. There is a conclusive presumption that
- 31 appropriate corrective action was taken if there are no additional police
- 32 responses to the property from the end of the 30-day period until the
- 33 earlier of:
- 34
- 35 1. The end of the calendar year; or
- 36
- 37 2. Ninety days.
- 38

39 (AO No. 2002-144(S-1), § 1, 12-17-02)

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41 **8.80.050 Lien on property.**

- 42
- 43 A. A fee imposed under Section 8.80.020 is a lien on the property to which
- 44 there have been an excessive number of police responses.
- 45
- 46 B. The lien becomes effective upon the recording of a notice of the lien
- 47 that:
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1. Describes the property that is the subject of the lien;
2. States the amount of fees accrued at the time of recording;
3. States the total amount secured by the lien is calculated at the end of the applicable calendar year; and
4. States the lien has been recorded pursuant to this section.

C. When a notice of the lien has been recorded under subsection B., the lien has priority over all other liens except:

1. Liens for property taxes, special assessments, and sales and use taxes;
2. Liens perfected before the recording of the lien under this section; and
3. Mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the lien under this section.

(AO No. 2002-144(S-1), § 1, 12-17-02)

8.80.060 Appeal rights.

A person determined liable for fees for excessive police responses under this chapter may, within thirty days of receiving a notice of imposition of fees, apply for a hearing on the determination. The application shall be in writing and filed with the chief of police. The hearing shall be held within fifteen days of receiving a timely application before the chief of police or his designee and conducted pursuant to chapter 3.60. The hearing shall be limited to the issue of whether the person is liable for each fee imposed under this chapter, as found by the police department. Within 30 days of the written decision of the chief of police, a person aggrieved by the decision may appeal to the Superior Court of the Third Judicial District in Anchorage, in accordance with the Alaska Rules of Appellate Procedure.

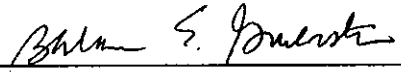
Section 3. This ordinance shall become effective immediately upon its passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 17th day of November, 2009.


Chair of the Assembly

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ATTEST:


Municipal Clerk

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 311-2009(A)

Meeting Date: October 27, 2009

1 **From: Assemblymember Selkregg**

2
3 **Subject: AN ORDINANCE REPEALING AND RE-ENACTING**
4 **ANCHORAGE MUNICIPAL CODE CHAPTER 8.80 REGARDING**
5 **FEEES FOR EXCESSIVE POLICE RESPONSES.**
6

7 This Assembly Memorandum describes the changes made to create the S-
8 version from the originally introduced ordinance 2009-71. The floor amendments
9 proposed by Assemblymember Coffey at the September 15, 2009 meeting are
10 incorporated in this S-version, with a few modifications.

11
12 The floor amendments to the definition of "Police response" are included, except
13 for the proposed subsections 6.c. and 7.d., which had excluded from the
14 definition any "law enforcement matters unrelated to the operation" of the retail or
15 licensed premises. In their stead, a phrase has been added in the main
16 paragraph definition of "police response" to also include a response that a
17 sergeant or higher ranking police officer determines is related to onsite activities
18 and could have been prevented by appropriate security measures. The changes
19 in the S-version are marked accordingly in legislative format.
20

21
22 **THE ADMINISTRATION RECOMMENDS APPROVAL OF AN ORDINANCE**
23 **REPEALING AND RE-ENACTING ANCHORAGE MUNICIPAL CODE**
24 **CHAPTER 8.80 REGARDING FEEES FOR EXCESSIVE POLICE RESPONSES.**
25

26 Prepared by: Department of Law
27 Respectfully submitted: Sheila Selkregg, Assemblymember
28

Chapter 8.80 FEE FOR POLICE PROTECTION SERVICES

- 8.80.010 Definitions; interpretation.
- 8.80.020 Fee for police protection services.
- 8.80.030 Notice to property owner.
- 8.80.040 Corrective action.
- 8.80.050 Lien on property.

8.80.10 Definitions; interpretation.

As used in Chapter 8.80:

Dwelling unit means a structure or portion thereof providing independent and complete cooking, living, sleeping, and toilet facilities for a group of persons living as a single housekeeping unit.

Excessive police response means each police response in excess of eight to a single dwelling unit in a residential property.

Mobile home means a detached single dwelling unit fabricated at a factory and capable of being transported to location of use on its own chassis and wheels, identified by a model number and serial number by its manufacturer, and designed primarily for placement on an impermanent foundation.

Owner, when used in reference to a residential property, means the record owner or owners of the residential property as shown in the real property records.

Police response means that one or more police officers goes to a residential property in response to a call for assistance, a complaint, an emergency or a potential emergency; provided that the term "police response" does not include a response to:

1. Receipt of false information as defined in Section 8.30.050, unless the false information was provided by an occupant or owner of the residential property;
2. A false alarm as defined in Section 8.40.010, unless the false alarm was caused, permitted or allowed by an occupant or owner of the residential property in violation of Section 8.40.020; or
3. A call involving potential child neglect, potential domestic violence as defined in AS 18.66.990, or potential stalking under AS 11.41.260 or 11.41.270.

Residential property means a parcel, tract or lot shown as an individual unit on the most recent plat of record that contains one or more dwelling units, and a mobile home.

(AO No. 2002-144(S-1), § 1, 12-17-02)

8.80.020 Fee for police protection services.

- A. Subject to subsection B, the owner of a residential property shall pay the Municipality a fee of \$500.00 per excessive police response to the residential property during a calendar year.
- B. The owner of a residential property shall be liable for the fee established by subsection A only if:
 - 1. The municipality has notified the owner in writing as provided in Section 8.80.030 that the fee will apply to any excessive police responses to the residential property during the calendar year;
 - 2. The time allowed for appropriate corrective action under Section 8.80.040 has expired; and
 - 3. The owner has not taken appropriate corrective action as required by Section 8.80.040
- C. If a residential property has more than one owner, all owners shall be jointly and severally liable for any fee imposed under this section.
- D. For residential property owned as a condominium, a fee based on excessive police responses to a single dwelling unit shall be assessed against the owner of the dwelling unit.

(AO No. 2002-144(S-1), § 1, 12-17-02)

State law references: Fees for police protection services, AS 29.35.125.

8.80.030 Notice to property owner.

- A. The municipality may notify the owner of a residential property in writing when there have been eight police responses in the current calendar year to a single dwelling unit in the residential property.
- B. A notice under this section shall be given in a manner that is reasonably calculated to provide actual notice to the owner of the residential property. At a minimum, the notice shall be sent by certified mail, return receipt requested, to the mailing address of the owner as shown on the municipality's real property tax records, and if the residential property has a different street address, to that street address. The municipality also shall give notice by certified mail, return receipt requested at another address where it appears more likely that the owner will receive actual

notice at that address. Such other address may include, without limitation, an address identified from the telephone directory, public records, or prior police contacts with the residential property or the owner. The notice also shall be posted at the principal entrance to the residential property.

C. The notice shall:

1. Identify the residential property that is the subject of the notice by street address and legal description, and identify the dwelling unit to which the police responses have been made if there is more than one dwelling unit in the residential property;
2. State that there have been eight police responses to a dwelling unit in the residential property during the current calendar year;
3. State that if the owner does not take appropriate corrective action, the owner will be liable for a fee for each excessive police response to the residential property during the calendar year;
4. State the amount of the fee per excessive police response to the residential property; and
5. State the name and telephone number of a representative of the municipality to contact concerning the notice.

(AO No. 2002-144(S-1), § 1, 12-17-02)

8.80.040 Corrective action.

- A. An owner of a residential property shall have 30 days from the date of mailing of the notice required under Section 8.80.030 to promptly take appropriate corrective action in response to the notice. Appropriate corrective action shall be action that reasonably would be expected to correct the cause of the police responses to the residential property, and may include, without limitation, written notice to quit under AS 09.45.100--09.45.110.
- B. There shall be no fee for additional police responses to the residential property that is the subject of the notice during the 30-day period allowed under subsection A if the owner takes appropriate corrective action during the 30-day period. The owner shall be considered to have taken appropriate corrective action if there are no additional police responses to the residential property from the end of the 30-day period until the earlier of the (i) end of the calendar year, or (ii) the date 90 days after the end of the 30-day period allowed under subsection A.

(AO No. 2002-144(S-1), § 1, 12-17-02)

8.80.050 Lien on property.

- A. A fee imposed under Section 8.80.020 is a lien on the residential property to which there have been an excessive number of police responses.
- B. The lien becomes effective upon the recording of a notice of the lien that describes the residential property that is the subject of the lien, states the amount of fees for which the lien has been recorded, and states that the lien has been recorded pursuant to this section.
- C. When notice of a lien has been recorded under subsection B of this section, the lien has priority over all other liens except:
 - 1. Liens for property taxes, special assessments, and sales and use taxes;
 - 2. Liens that were perfected before the recording of the lien under this section; and
 - 3. Mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the lien under this section.

(AO No. 2002-144(S-1), § 1, 12-17-02)