



**MUNICIPALITY OF ANCHORAGE  
ASSEMBLY MEMORANDUM**

No. AM 328-2021

Meeting Date: May 25, 2021

1 **From: ACTING MAYOR**

2  
3 **Subject: AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE**  
4 **TITLE 8 TO UPDATE ABUSE OF A CHILD OR VULNERABLE**  
5 **ADULT IN SECTION 8.10.030, HARASSMENT IN SECTION**  
6 **8.10.110, AND CRIMINAL MISCHIEF IN SECTION 8.20.010.**  
7

8 This ordinance updates three areas of Anchorage Municipal Code Title 8. The  
9 changes to Abuse of a Child or Vulnerable Adult include fixes to the code which will  
10 enable the Municipal Prosecutor's Office to prosecute more effectively. The  
11 changes to that section also address some concerns raised by the Court of Appeals.  
12 The changes to Harassment broaden the variety of behaviors which can be  
13 prosecuted under the Municipal Code. The changes to Criminal Mischief lower the  
14 level of intent, lowering the burden on prosecutors and bringing the level of intent  
15 closer to similar domestic violence injury and fear assault crimes.  
16

17 **8.10.030 Abuse of a Child or Vulnerable Adult**  
18

19 This ordinance makes several changes to this code. In subsection B. "intentionally,  
20 knowingly" is deleted, leaving the required level of intent as "reckless." It should be  
21 noted that "reckless" includes the two higher deleted levels of intent. For example,  
22 if one is found to have acted intentionally, they have also acted recklessly. This  
23 change makes the language of the ordinance cleaner. It also focuses a jury's  
24 deliberation on whether a defendant has met the "reckless" standard which would  
25 result in a conviction. Experience with jury trials tells us that additional higher levels  
26 of intent in code can distract the jury from the lower intent standard upon which they  
27 must focus. If a jury is focused on the fact that an act was not intentional, they are  
28 more likely to minimize the lower requisite level of intent of recklessness when  
29 determining guilt.  
30

31 In subsection B. it was previously a crime to negligently cause or permit a child to  
32 be physically injured. This ordinance raises the intent level for physical injury to  
33 reckless. This change reflects the reality of how cases are assessed by the  
34 Prosecutor's Office when it makes charging decisions. Currently the Prosecutor's  
35 Office would not screen in a case where a parent was charged with negligently  
36 causing or permitting injury. An example would be a parent failing to properly  
37 supervise a child playing on a playground who then falls and hurts themselves. This  
38 would be negligently permitting injury, yet it would likely not be charged by our office.  
39 It should be noted that it remains a crime to negligently allow torture, cruel  
40 confinement, or cruel punishment.  
41

42 This ordinance deletes subsections D., E., and F. in their entirety. These sections  
43 were no doubt added to the code to clearly express disapproval of the parental  
44 conduct described in subsection F. while acknowledging the rights of parents to use

1 reasonable parental discipline as described in subsection E. However, over the  
2 years this part of the code has proved to be problematic in many ways. The Court  
3 of Appeals in Alaska noted some of the issues with the code in *Beagley v.*  
4 *Anchorage*, 2015 WL 4599602 (Alaska App. July 29, 2015) (unpublished and  
5 attached as Attachment A).

6  
7 In that decision, the Court of Appeals noted that the code as currently written allows  
8 torture if it is part of “reasonable parental discipline.” For example, it is “prima facie  
9 unreasonable” to brand a child. But this presumption can be rebutted by proof that  
10 the branding was part of “reasonable parental discipline.” The current language of  
11 the code, while intending to express disapproval of branding, instead signals to  
12 juries, parents, and communities that branding is permissible in the right  
13 circumstances.

14  
15 Another problem with listing “prima facie unreasonable” acts is that when confronted  
16 with such a list, jurors are led to believe that anything not on the list must be prima  
17 facie reasonable. For example, a jury might conclude that because scalding is listed  
18 as unreasonable, but the ordinance is silent on subjecting children to cold, that  
19 forcing a child to take an ice bath is therefore presumptively reasonable.

20  
21 The Court of Appeals noted that it is unclear whether the ordinance defines  
22 “reasonable parental discipline” by reference to a parent’s subjective reasons for  
23 harming the child or by reference to the objective reasonableness of the parent’s  
24 decision to harm the child. The factors to be considered in determining “reasonable  
25 parental discipline” are listed in subsection E. Some of those factors are objective  
26 (e.g. age of the child), while at least one factor, apparent motive of the parent, is  
27 subjective. This leads to confusion for jurors as they attempt to determine whether  
28 an act was “reasonable parental discipline.”

29  
30 The Court of Appeals also noted that it is arguably unconstitutional to require the  
31 parent to prove that discipline is reasonable as an affirmative defense as described  
32 in subsection D. This ordinance would resolve that issue by removing the affirmative  
33 defense language. There is already language from state statute that defendants can  
34 use which provides a justification defense. AS 11.81.430(a)(1), which can be used  
35 in municipal prosecutions, states:

- 36  
37 **(a) The use of force on another person that would otherwise**  
38 **constitute an offense is justified under any of the**  
39 **following circumstances:**  
40 **(1) When and to the extent reasonably necessary and**  
41 **appropriate to promote the welfare of the child or**  
42 **incompetent person, a parent, guardian, or other**  
43 **person entrusted with the care and supervision of a**  
44 **child under 18 years of age or an incompetent**  
45 **person may use reasonable and appropriate**  
46 **nondeadly force on that child or incompetent**  
47 **person.**

48  
49 There is also a catchall justification defense which can be used for a situation not

1 described above. AS 11.81.320 reads:

- 2
- 3 (a) **Conduct which would otherwise be an offense is justified**
- 4 **by reason of necessity to the extent permitted by**
- 5 **common law when**
- 6 (1) **neither this title nor any other statute defining the**
- 7 **offense provides exemptions or defenses dealing**
- 8 **with the justification of necessity in the specific**
- 9 **situation involved; and**
- 10 (2) **a legislative intent to exclude the justification of**
- 11 **necessity does not otherwise plainly appear.**
- 12
- 13 (b) **The justification specified in (a) of this section is an**
- 14 **affirmative defense.**
- 15

16 (In *Bird v. Municipality of Anchorage*, 787 P.2d 119, 120 (Alaska Ct. App. 1990)

17 the Court of Appeals noted that AS 11.81.320 is available to all defendants in

18 Alaska, even, as in *Bird*, when they are prosecuted under municipal code.)

19

#### 20 **8.10.110 Harassment**

21

22 This ordinance updates Harassment by changing the level of intent from “intent to

23 harass or annoy” to “reckless disregard for any harassing or annoying effect.” This

24 shifts the analysis from defendant’s motives to the effect on the victim. As currently

25 written, a defendant can argue that they did not mean to annoy or harass a victim,

26 but instead meant to gratify their own desires, for example. The Municipality has lost

27 at least one jury trial where a defendant argued that when he touched a victim he

28 didn’t intend to harass, as he thought the victim would find it pleasurable. This

29 change would disallow that argument.

30

31 Because technology has changed, the ordinance updates the list of media to include

32 “images” and “videos.”

33

34 The ordinance also makes it a crime to *threaten* to distribute sexual images, a fact

35 pattern currently not a crime under municipal code, but one the Municipal

36 Prosecutor’s Office encounters frequently. Currently abusers can effectively exert

37 control over their victims by threatening to publish sexual images and thereby

38 threatening the victim’s reputation, personal life, and job. This change will untie the

39 Prosecutor’s hands.

40

41 The ordinance makes it a crime to touch a person’s genitals, buttocks, or female

42 breast directly. Currently it is only a crime to do so through clothing. While there are

43 felony-level crimes prosecuted by the state which address direct contact, often these

44 cases are sent to the Municipality to be prosecuted. However, as currently written,

45 the municipality cannot prosecute such contact under the code. This change closes

46 the loophole.

47

48 The ordinance prohibits “unwanted” physical contact of the genitals, buttocks, or

49 female breast. Community members should be protected from being touched on the

1 genitals where such behavior is unwanted. Currently a jury must find that the  
2 behavior is "offensive." This language addition allows the jury to convict where the  
3 victim did not want to be touched on the genitals, regardless of whether a jury found  
4 the behavior "offensive." Again, this change closes the loophole.

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6 **8.20.010 Criminal Mischief**

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8 By deleting "with intent to do so" the ordinance changes the level of intent from  
9 intentional to the default level of intent for Municipal crimes found in AMC  
10 8.05.010B.:

- 11  
12 **B. If a provision of law defining an offense does not**  
13 **prescribe a culpable mental state, the culpable mental**  
14 **state that must be proved with respect to:**  
15 **1. Conduct is "knowingly"; and**  
16 **2. A circumstance or result is "recklessly."**  
17

18 This lowers the burden on prosecutors. It also brings the level of intent closer to the  
19 level of intent for domestic violence injury and fear assaults, which have a reckless  
20 standard. Especially in domestic violence situations, the intent may not be to  
21 damage property. The intent may be to express rage or increase the level of control  
22 over the victim. Nonetheless, property is damaged. The current language allows  
23 defendants to argue that they are innocent of the property damage if they had some  
24 other intent, such as to exert control over a family member.

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26 The proposed ordinance has no anticipated economic effects. No summary of  
27 economic effects is attached.

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29 **THE ADMINISTRATION RECOMMENDS APPROVAL.**

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32 Prepared by: Sarah Stanley, Municipal Prosecutor  
33 Approved by: Kathryn R. Vogel, Municipal Attorney  
34 Concur: Anna C. Henderson, Municipal Manager  
35 Respectfully submitted: Austin Quinn-Davidson, Acting Mayor