

Chapter 2.60 OFFICE OF THE OMBUDSMAN*

***Charter references:** Ombudsman, § 4.07; telephone utility subject to ombudsman, § 16.03(d).

Cross references: Code of ethics, Ch. 1.15.

State law references: State ombudsman, AS 24.55.010--24.55.340.

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2.60.010 Purpose.

The municipality hereby establishes, in addition to other remedies or rights of appeal, an independent, impartial municipal office, readily available to the public, responsible to the assembly, empowered to investigate the acts of administrative agencies and to recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and equity in the provision of municipal services.

(AO No. 77-94)

2.60.020 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative act means an action, omission, decision, recommendation, practice, policy or procedure.

Agent of the municipality includes a department, office, institution, corporation, authority, board, commission, committee or council of the municipality, including boards and commissions established in Title 4, a contractor providing service to the public on behalf of the municipality, and any officer, employee or member of such entities acting or purporting to act in the exercise

of their official duties.

Municipality and *municipal* mean the Municipality of Anchorage and the Anchorage School District.

(AO No. 77-94; AO No. 89-45; AO No. 92-20)

Cross references: Definitions and rules of construction generally, § 1.05.020.

2.60.030 Establishment.

The office of ombudsman is established in the legislative branch of the municipality pursuant to Charter Section 4.07.

Charter references: Similar provisions, § 4.07.

2.60.040 Appointment of ombudsman.

A person may be nominated for appointment as the ombudsman by a selection committee made up of assembly members. The appointment shall become effective if approved by a majority of the assembly.

(AO No. 77-94)

2.60.050 Qualifications of ombudsman; service in elective office; political activities by ombudsman or staff.

- A. *Qualifications of ombudsman.* No person may serve as ombudsman:
1. While he is engaged in any other occupation for which he receives compensation;
 2. Within one year of the last day on which he served as an elected official;
 3. While he is a candidate for or holds any national, state or municipal elective office; and
 4. Unless he has been a resident of the municipality for at least one year.
- B. *Subsequent service by ombudsman in elective office.* A person shall not serve in any federal, state or municipal elective office until one year has elapsed from the last day on which he served as the ombudsman.
- C. *Political activities.* The ombudsman and any permanent office staff may not actively participate in any municipal, state or federal election campaign. An additional restriction shall prohibit the making of political contributions to assembly, school board or mayoral candidates. Members of the ombudsman's office shall not be prohibited from expressing private opinions, serving as a delegate to party conventions or voting.

(AO No. 77-94)

Charter references: Ombudsman, § 4.07.

State law references: Similar provisions, AS 24.55.030.

2.60.060 Term of office of ombudsman.

The term of office of the ombudsman shall be two years, ending on December 31 of the even-numbered years.

(AO No. 77-94)

2.60.070 Removal of ombudsman.

The ombudsman may be removed from office during his term by a majority vote of the assembly.

(AO No. 77-94)

2.60.080 Staff; delegation of duties.

- A. The ombudsman may appoint an assistant or deputy. He may also appoint other personnel necessary to carry out the provisions of this chapter, when in keeping with the assembly-adopted budget for the ombudsman's office.
- B. The ombudsman may delegate to his assistant or deputy any of his duties. However, those responsibilities described in Section 2.60.130.B may be delegated only in writing and only by reason of the ombudsman's absence due to illness, vacation or business.
- C. The assistant or deputy shall succeed to all duties and responsibilities of the ombudsman, including those specified in Section 2.60.130.B, when he is serving as the acting ombudsman.
- D. The ombudsman's staff shall be selected in accordance with the provisions of the personnel regulations relating to classified employees.

(AO No. 77-94)

2.60.090 Compensation of ombudsman and staff.

- A. The ombudsman's salary shall be set annually by the assembly. The ombudsman's salary may not be reduced during his term.
- B. The salary and benefits of the ombudsman and his staff shall accrue according to the effective personnel regulations of the municipality.

(AO No. 77-94)

2.60.100 Office facilities and administration.

- A. The municipality shall provide suitable office facilities for the ombudsman and staff in a location convenient for the public.
- B. The ombudsman shall annually prepare a budget proposal for submission to the assembly. Copies shall be provided to the mayor for informational purposes to assist in the preparation of the municipal budget.

- C. The ombudsman shall comply with all administration procedures prescribed by ordinance except as provided in this section. Request for executive approval of office matters, such as office supplies, budget and personnel, shall be submitted to the administration in proper form. In order to ensure the independence and objectivity of the ombudsman, the executive's discretionary decisions shall be considered advisory. The executive branch shall retain the authority to deny any request which is otherwise contrary to ordinance or which exceeds the assembly-adopted budget for the office.

(AO No. 77-94)

2.60.110 Jurisdiction.

- A. The ombudsman may investigate the administrative acts of agents of the municipality, including the directors and employees of the Anchorage Telephone Utility.
- B. The ombudsman may investigate the administrative act of an agent of the municipality on his own motion if he reasonably believes that it is an appropriate subject for review.
- C. An appropriate subject for investigation by the ombudsman is an administrative act which the ombudsman has reason to believe might be:
 - 1. Contrary to law;
 - 2. Unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, or unnecessarily discriminatory even though in accordance with law;
 - 3. Based on a mistake of fact;
 - 4. Based on improper or irrelevant grounds;
 - 5. Unsupported by an adequate statement or reasons;
 - 6. Performed in an inefficient or discourteous manner; or
 - 7. Otherwise erroneous.
- D. The ombudsman shall be barred from inquiry into acts of the mayor, the assembly or the school board. The ombudsman shall retain the authority to appeal complaints through the executive branch and mayor to the assembly.

(AO No. 77-94; AO No. 91-173(S); AO No. 92-20)

2.60.120 Investigation of complaints.

- A. The ombudsman may cease his investigation of a complaint when the complainant has brought the same matter to the attention of the courts for resolution.
- B. The ombudsman may cease his investigation of a complaint when he reasonably believes that:
 - 1. There is presently available an adequate remedy for grievance stated in the complaint.
 - 2. The complaint relates to a matter that is outside the jurisdiction of the ombudsman.

3. The complaint relates to an administrative act of which the complainant has had knowledge for an unreasonable length of time before the complaint was submitted.
 4. The complainant does not have a sufficient personal interest in the subject matter of the complaint.
 5. The complaint is trivial or made in bad faith.
 6. The resources of the ombudsman's office are insufficient for adequate investigation.
- C. The ombudsman shall protect the confidentiality of complainants or witnesses coming before him except insofar as disclosures may be necessary to enable the ombudsman to carry out his duties.
- D. No fees shall be charged for the submission, investigation or pursuit of complaints.
- E. The ombudsman may request that complaints charging serious personal improprieties, particularly when the complaint may result in disciplinary action against an employee, be filed in writing.
- F. The ombudsman may by regulation establish procedures for receiving and processing complaints, conducting investigations and reporting findings.

(AO No. 77-94)

2.60.130 Investigative powers.

- A. In an investigation the ombudsman may:
1. Enter without notice to inspect the premises of a department during normal business hours and when departmental personnel are present.
 2. Review any municipal document or take testimony which he deems relevant to an investigation. Under no circumstances, however, shall the ombudsman make public comment upon or otherwise publicly disseminate any material or information received by him during the course of an investigation which is accorded confidential or privileged status by federal, state or local law, or which would otherwise result in an unwarranted invasion of personal privacy if released.
- B. Subject to the privileges which witnesses have in courts of this state, the ombudsman may:
1. Compel by subpoena, at a specified time and place, the appearance and sworn testimony of a person whom the ombudsman reasonably believes may be able to give information relating to a matter under investigation; and
 2. Compel a person, by subpoena, to produce documents, papers or objects which the ombudsman reasonably believes may relate to the matter under investigation.
- C. If a person refuses to comply with a subpoena issued under subsection B of this section, the superior court may, on application of the ombudsman, compel obedience by

proceedings for contempt in the same manner as in the case of disobedience to the requirements of a subpoena issued by the court or refusal to testify in the court.

(AO No. 77-94; AO No. 77-144)

2.60.140 Recommendations.

- A. The ombudsman may make recommendations for the resolution of complaints and inquiries in accordance with this chapter.
- B. In seeking a resolution to a complaint or inquiry concerning the municipality, the ombudsman may bring the matter to the attention of a department head, the municipal manager, the mayor, the assembly or the public.
- C. Before offering a report or recommendation which is critical of a department or person, the ombudsman shall consult with that department or person.
- D. The ombudsman may require a department to notify him within a reasonable specified time of any action taken on his recommendation.

(AO No. 77-94)

2.60.150 Notice to complainants.

The ombudsman shall notify the complainant of the actions taken by the ombudsman and the department within a reasonable time after the conclusion of the matter.

(AO No. 77-94)

2.60.155 Notice to citizens.

The ombudsman shall post notices and use other appropriate means to inform citizens of their rights and protections under Sections 2.60.010--2.60.180. These notices shall be posted in public areas of all buildings owned or leased by the municipality or the school district. Nothing in this section is to be construed as repealing any other provisions of contract, ordinance or law.

(AO No. 92-106)

2.60.160 Reports.

The ombudsman shall submit to the assembly a report of his activities at least once a year.

(AO No. 77-94)

2.60.170 Misconduct by municipal personnel.

If the ombudsman believes there is a breach of duty or misconduct by an officer or employee of the municipality, the ombudsman shall refer the matter to the appropriate department head, to the mayor or, when appropriate, to the municipal prosecutor, district attorney, grand jury or any other agency.

(AO No. 77-94)

2.60.180 Interference with ombudsman or staff.

A person who willfully hinders the lawful actions of the ombudsman or staff, or who willfully refuses to comply with their lawful demands, is guilty of a misdemeanor and upon conviction by a court of competent jurisdiction is punishable by a fine of not more than \$500.00. Violation of this section may be punishable through imposition of a civil penalty as set forth in Section 14.60.030 or, if such violation is not listed in the fine schedule set forth in Section 14.60.030, a civil penalty as set forth in Section 1.45.010. This section shall not be construed so as to require administrative officials to implement the ombudsman's recommendations for resolving complaints.

(AO No. 77-94; AO No. 93-167(S-1), § 4, 4-13-94)