



March 20, 2024

Final Investigative Report Concerning Ombudsman Complaint 2022-1383

COMPLAINT

In December 2022, a municipal employee contacted the Ombudsman with concerns regarding the alleged actions of multiple municipal employees, departments, and contractors. The employee was terminated shortly after contacting the Ombudsman. Given civil litigation involving the former employee and the Municipality of Anchorage, the Ombudsman later removed them as the complainant in this case and substituted the Ombudsman's Office. AMC 2.60.11.B allows the Ombudsman to investigate on their own motion if the Ombudsman "reasonably believes that it is an appropriate subject for review".

The employee had alleged:

1. That the Mayor* and his staff "knowingly" violated municipal code by increasing the capacity of the Sullivan Arena Emergency Shelter beyond what was allowed by code.
2. That an MOA employee had accessed the Alaska Homeless Management Information System for inappropriate purposes.
3. That the Municipality's Purchasing Director had distributed genitalia shaped cookies to employees at City Hall.
4. That the sole source contracting process for the Mayor's Senior Policy Advisor did not follow the requirements of Title 7 and the applicable Purchasing Department policies and practices
5. That the Mayor's Senior Policy Advisor was retained as a contractor, rather than being hired as a municipal employee, to circumvent or defraud the State of Alaska Public Employees Retirement System.
6. That the Mayor's Senior Policy Advisor had pressured the former Municipal Attorney to drop the municipal misdemeanor domestic violence charges involving the policy advisor's business partner.

**The Ombudsman's Office is barred from inquiring into the actions of the Mayor, the Assembly, and the School Board. The Ombudsman's Office can generally inquire into the actions of MOA employees, including members of the Mayor's staff.*

FINDINGS

The Ombudsman makes a written finding based on the evidence obtained during an investigation, that the complaint or allegation is:

1. Justified, if the ombudsman determines or believes the complainant's criticism is valid;
2. Partially justified, if the ombudsman determines or believes that the complaint is justified and action or inaction by the complainant affected the outcome; or constraints of law, policy or procedure limited agency response; or only a portion of the complainant's criticism is valid;
3. Not supported, if the ombudsman determines or believes the complainant's criticism is not valid; or
4. Indeterminate, if investigation does not provide sufficient evidence for the ombudsman to determine conclusively whether the complainant's criticism is valid or not valid.

Allegation #1, that municipal employees had knowingly violated municipal code by increasing the capacity of the Sullivan Arena Emergency Shelter beyond what was allowed by code is **JUSTIFIED**.

Allegation #2, that an MOA employee had accessed the Alaska Homeless Information Management System for inappropriate purposes is **NOT SUPPORTED**.

Allegation #3, that the Municipality's Purchasing Director had distributed genitalia shaped cookies to employees at City Hall is **JUSTIFIED**.

Allegation #4, that the sole source contracting process for the Mayor's Senior Policy Advisor did not follow the requirements of Anchorage Title 7 and the applicable Purchasing Department policies and practices is **JUSTIFIED**.

Allegation #5, that the Mayor's Senior Policy Advisor was retained as a contractor, rather than being hired as a municipal employee, to circumvent or defraud the State of Alaska Public Employees Retirement System is **NOT SUPPORTED**.

Allegation #6, that the Mayor's Senior Policy Advisor attempted to influence the former Municipal Attorney to drop the municipal misdemeanor domestic violence charges involving his business partner. *Based on his investigation, the Ombudsman had a reasonable belief that a breach of duty or misconduct may have occurred, and he referred the matter to another agency for review and possible investigation.*

BACKGROUND, ANALYSIS AND CONCLUSIONS

In December 2022, a municipal employee contacted the Ombudsman with concerns regarding the alleged actions of multiple municipal employees, departments, and contractors. The employee was terminated shortly after contacting the Ombudsman. Given civil litigation involving the former employee and the MOA, the Ombudsman later removed them as the complainant in this case and substituted the Ombudsman's Office, because the Ombudsman reasonably believed that the allegations involved matters of public concern and were appropriate subjects for review. During his inquiry, the Ombudsman reviewed the relevant sections of municipal code, recordings of Assembly meetings, photographs, 1,500+ documents received as part of a records request, emails, memorandums, Internal Revenue Service guidelines, the State of Alaska Public Employees Retirement System website, the MOA ethics code, Human Resource Department files, and multiple MOA policies. The Ombudsman's Office also interviewed multiple current and former MOA employees.

The employee had alleged:

***Allegation #1**, that municipal employees had knowingly violated municipal code by increasing the capacity of the Sullivan Arena Emergency Shelter beyond what was allowed by code.*

AMC 16.120.040 authorizes the Anchorage Health Department (AHD) Director to designate facilities as emergency shelters, with capacity at any shelter not to exceed 150 persons without Assembly approval. AR 2022-293, As Amended, authorized five facilities, including the Sullivan Arena, to be mobilized as emergency shelters when the MOA's Emergency Shelter Plan was activated. October 3, 2022, the Assembly approved AR 2022-313, As Amended, which authorized a capacity surge of 50 clients beyond the 150 clients allowed by code at the Sullivan Arena Emergency Shelter, under certain conditions. Authorization for the surge capacity was set to expire on December 31, 2022. In addition to the clients being sheltered in the Sullivan Arena, there was a warming area in the parking lot of the Sullivan Arena that had seen its numbers rise from approximately 20 persons a day in early October, to 70 a day during Thanksgiving week, and to over 170 persons a day in the week after Thanksgiving.

In early December, the media started reporting that the warming area had been moved inside of the Sullivan Arena, on the upper mezzanine (the shelter beds were located on the main floor of the arena). Persons in the warming area were not provided beds, were not allowed to sleep, and were not provided meals – they were provided the same basic warming service that had been provided in tents in the parking lot. Although the persons in the warming area were not provided the same level of services that were being provided to persons on the main floor of the facility, they were being sheltered within the building. Common sense dictated that they would count towards any census of the number of persons being sheltered within the emergency shelter facility – a census that was capped, at the time, at 200 (150 plus the Assembly authorized surge of 50 persons).

The Anchorage Health Department's "Application To Operate An Emergency Shelter" lists the "Maximum Occupancy" for shelters, and to be approved, the application must be signed by the Fire Marshal, Health Department Program Manager, and the Health Department Director. The maximum occupancy listed on the approved application to operate the Sullivan Arena as an emergency shelter was 150. The occupancy of an approved shelter can only be legally increased beyond the maximum occupancy listed on the approved application if the Assembly approves increasing the occupancy, or the Mayor issues an emergency declaration. MOA staff had seen the numbers for the warming area in the parking lot of the Sullivan Arena climb rapidly and significantly from September to November – they should have known that the temperatures would continue to drop and that the numbers for the warming area would probably continue to rise. Staff should have planned accordingly and should have requested that the Assembly increase the capacity of the shelter before the situation became what staff perceived to be an emergency life or death situation. Or, given the lack of planning by staff, they could have requested that the Mayor issue an emergency declaration to ensure that moving the warming area into the Sullivan Arena did not violate municipal code.

During his review, the Ombudsman viewed the video recording of the December 20, 2022 Assembly meeting where AR 2022-411, which would have raised the authorized capacity of the Sullivan to 360 clients, was on the agenda. During the meeting, members of the Assembly questioned why the Administration had increased the capacity of the Sullivan beyond the 200 clients that were authorized, by moving the warming area into the facility. Based on the comments by multiple members of the Administration, it was obvious that they were aware that moving the warming area into the Sullivan had increased the capacity of the emergency shelter beyond the 200 that was authorized by the Assembly at that time. Members of the Administration spoke of their duty to protect vulnerable persons during cold weather – they saw it as a life-or-death situation that they needed to respond to immediately, and they spoke of facing a "moral dilemma" and of taking the path that protected people.

While the Ombudsman understands and sympathizes with a moral imperative to save lives and may have made a similar decision if this situation had occurred when he was the MOA's Homeless Coordinator, all MOA employees have an obligation to follow the law. It is a slippery slope if MOA employees start not following the requirements of MOA code because of their personal moral dilemmas or imperatives. Where does it stop? What are the limits? There are consequences for members of the public when they don't follow MOA codes – they receive citations, notices of violation, civil fines, and other penalties and sanctions. Generally, there are currently no consequences for MOA employees not following the requirements of MOA codes in the performance of their duties – this may encourage MOA employees to not follow codes that they don't agree with or that they think are onerous, outdated, or impractical, or that they may have a moral conflict with.

The Assembly eventually approved AR 2022-411, increasing the capacity of the Sullivan Arena Emergency Shelter, which made this complaint moot on one level. While exceeding the capacity at the shelter beyond the limit authorized by the Assembly did not harm anyone, and may have benefitted vulnerable persons, this matter raises the issue of whether there should be

consequences for MOA employees not following the provisions of MOA codes in the performance of their official duties. The Ombudsman questions if this something that should be covered in the MOA's Personnel Rules or in a policy and procedure. How do we balance necessary employee discretion with the need for employees to follow the requirements of municipal code? These are questions that need to be addressed.

Based on his investigation and the preponderance of the available evidence, the Ombudsman determined that the allegation that municipal employees had knowingly violated municipal code by increasing the capacity of the Sullivan Arena Emergency Shelter beyond what was allowed by code is JUSTIFIED.

Allegation #2, that an MOA employee had accessed the Alaska Homeless Information Management System for inappropriate purposes.

The original complainant had stated that the Anchorage Police Department (APD) had been called to the home of a member of the Mayor's staff on Thanksgiving Day 2022, regarding an alleged trespasser. The trespasser was subsequently arrested, and the complainant alleged that an MOA employee had accessed the Alaska Homeless Management Information System (HMIS) to run the name of the arrestee to see if they were in the system and to gather information about them. Access to the HMIS is tightly controlled, with robust security measures in place, and access is only allowed for legitimate case management purposes. Some MOA employees have access to the HMIS but should only access the system for legitimate business purposes.

The Ombudsman contacted the Acting Director of the Anchorage Health Department and was informed that the MOA employee who allegedly accessed the HMIS did not have an HMIS password that allowed them access to the system. The Ombudsman obtained a copy of the APD report regarding the incident at the staff member's home and verified that the name of the person who had been arrested had not been entered into the HMIS during the timeframe alleged in the complaint. The Ombudsman could not find any evidence to support this allegation.

Based on his investigation and the preponderance of the available evidence, the Ombudsman determined that the allegation that an MOA employee had accessed the Alaska Homeless Information Management System for inappropriate purposes is NOT SUPPORTED.

Allegation #3, that the Municipality's Purchasing Director had distributed genitalia shaped cookies to employees at City Hall.

The original complainant had alleged that the MOA Purchasing Director (Director) had distributed decorated genitalia (penis) shaped cookies to employees in City Hall and provided the Ombudsman with photographs of some of the cookies that were allegedly distributed. The complainant alleged that multiple employees had contacted them to express their distress and discomfort regarding the cookies. The employees who had contacted them believed that the cookies were inappropriate and should not have been distributed in a professional work

environment, especially in government offices. After the complainant contacted the Ombudsman in December 2022, several current and former City Hall employees contacted the Ombudsman to file complaints regarding the incident involving the cookies and other alleged inappropriate behavior by the Director. The individuals who contacted the Ombudsman's Office stated that they considered the distribution of the genitalia shaped cookies in City Hall to be unprofessional, inappropriate and workplace harassment. One individual stated that they believed that distributing the cookies in the workplace might be considered sexual harassment under federal Equal Employment Opportunity Commission guidelines.

The MOA employees and former employees who contacted the Ombudsman alleged that the Director had screamed, yelled, and cursed at them – one executive expressed concern regarding the Director's alleged behavior in the workplace, including "aggressive, intimidating, and disruptive behavior." The Ombudsman ascertained that none of the individuals had contacted the MOA Human Resources Department (HR) regarding the alleged inappropriate behavior by the Director, including the distribution of genitalia shaped cookies. The Ombudsman advised HR that he would be referring the individuals to them to file complaints. The original complainant's employment with the MOA was terminated shortly after they filed with the Ombudsman's Office – they were not referred to HR. HR informed the Ombudsman that they had only just learned of the alleged incident involving genitalia shaped cookies being distributed in City Hall. Multiple MOA employees filed complaints with HR concerning the Director, alleging harassment, bullying, and a hostile work environment – some of the complaints included the cookies and some did not. During the investigation by the Ombudsman's Office, it became apparent that the alleged distribution of genitalia shaped cookies at City Hall was only the tip of the alleged inappropriate behavior by the Director, which appeared to extend beyond bringing genitalia shaped cookies into City Hall.

The Ombudsman and Associate Ombudsman interviewed multiple current and former MOA employees, reviewed relevant emails and memos, and reviewed the HR investigative files related to the employee complaints filed regarding the Director. Based on their review, and the preponderance of all the available evidence, the Ombudsman's Office determined that:

1. HR had investigated all the employee complaints filed with them regarding the alleged inappropriate behavior of the Director, including the alleged distribution of genitalia shaped cookies at City Hall.
2. HR had substantiated all the complaints that employees had filed with them regarding the alleged inappropriate behavior of the Director.
3. HR had made recommendations for each substantiated complaint.
4. Action was taken regarding each of the substantiated complaints.

Unfortunately, MOA employees and members of the public have a perception that HR has not been responsive to employee complaints that have been filed with them regarding the Director's behavior – this perception is incorrect. HR has been investigating the complaints, has been drafting reports, and has been making recommendations – it is up to the supervisor/director/agency head of the employee against whom a substantiated complaint is

filed to accept and implement HR's disciplinary recommendations. The reality is that supervisors/directors/agency heads may choose to not implement the recommended disciplinary action or may reduce the severity of the discipline, which leads MOA employees and members of the public to believe that HR is not following through with employee complaints. Sadly, the lack of appropriate disciplinary action can give transgressors a sense of security and a belief that the rules don't apply to them, which only emboldens and enables them to continue their inappropriate behavior.

AMC 3.30.092 – Forms of discipline states that “Progressive discipline shall be followed when practicable. When the severity of the inappropriate conduct warrants and it is in the best interest of the municipality, the director may permit any of the following forms of discipline to be imposed at any time so long as such discipline is supported by just cause:

- A. Oral reprimand.
- B. Written reprimand.
- C. Suspension without pay.
- D. Demotion.
- E. Dismissal.”

The unfortunate reality is that progressive discipline for the same, repeated infractions does not specifically apply to MOA executives, although nothing prevents the MOA from applying progressive discipline to executives. Historically, substantiated employee complaints involving MOA executives has usually resulted in termination, so progressive discipline has not generally been part of the equation for MOA executives. AMC 3.30.176.A – Dismissal, demotion, suspension, reclassification and reassignment; notice of action to the assembly, states that “Employees occupying an executive position are appointed by, and serve at the pleasure of the responsible official for the appointing authority. As such, the responsible official may dismiss, demote or suspend any employee occupying an executive position for any reason, or no reason, without right of grievance or appeal”.

During his investigation, the Ombudsman heard rumors that there had been a second distribution of genitalia shaped cookies at City Hall by the Director. The Ombudsman was subsequently contacted by two MOA employees who alleged that there had been a second distribution of cookies. After interviewing multiple current and former MOA employees, including the Director, the Ombudsman determined that the “second” distribution of genitalia shaped cookies was chronologically the first distribution, which involved Valentine themed genitalia shaped cookies and occurred on February 11, 2022. The Director acknowledged bringing the cookies to City Hall on February 11th and stated that she regretted bringing the cookies to City Hall. The Director stated that the cookies were only provided to four persons that she thought were her friends while they were all in the Municipal Manager's office.

The Director stated that some of the persons who received cookies requested that the cookies become a monthly event. Copies of text messages that the Director provided to the Ombudsman and Associate Ombudsman, contain a lengthy text conversation between the Director and one of the employees who received a cookie. The employee appeared to find the

cookies humorous and stated that they were looking forward to similar cookies for other holidays. No employee filed a complaint with HR regarding the distribution of the Valentine themed cookies. The former Chief of Staff told the Ombudsman that she did not say anything to the Director regarding the February cookie distribution because she thought it was a one-off event and would not happen again. While the Director admitted bringing the Valentine themed genitalia shaped cookies to City Hall in February, she denied bringing St. Patrick's themed genitalia shaped cookies to City Hall in March.

The Director stated that following the 8:30 am staff meeting with the Mayor on Monday, March 14, 2022, the MOA Manager and Chief of Staff had counseled her to not bring the St. Patrick's genitalia shaped cookies to City Hall, after she had texted a photo of some of the cookies to select MOA employees on the evening of Sunday, March 13th, asking them to select their cookie. The former Chief of Staff also stated that the St. Patrick's cookies were not brought into City Hall and that she had counseled the Director regarding inappropriate cookies in City Hall. The Director provided the Ombudsman's Office with a screenshot of a text message she had sent to an MOA employee at 5:15 pm on March 14th, 2022, which stated "Can't bring cookies to work". This was two minutes before the Chief of Staff sent an email to the HR Director at 5:17 pm, informing him that she had spoken with the Director regarding inappropriate cookies on the 8th floor. The employee that the Director texted stated that the St. Patrick's cookies were distributed on the 8th floor on March 14th and that they assumed that the Director's text message was referring to a possible April (Easter) cookie distribution. On April 12, 2022, the Director texted that individual a photo of Easter themed genitalia shaped cookies, stating "What I can't bring to work". No one has alleged that the Director brought any genitalia shaped cookies into City Hall after March 14, 2022.

Six current and former employees had stated to the Ombudsman that the Director did bring St. Patrick's genitalia shaped cookies to City Hall – four of the employees stated that they had received a cookie from the Director on March 14, 2022. One former MOA executive, who was not part of the February cookie distribution and who was not texted photos of the St. Patrick's cookies on March 13th, was adamant that they had seen the genitalia shaped St. Patrick's cookies on the 8th floor of City Hall on March 14th. They stated that later that week, they had expressed their concerns regarding the cookies to the Mayor and other MOA staff members. They also stated that persons, including the Director, were joking about the cookies during the dinner break at the Tuesday, March 15th Assembly meeting. When interviewing HR staff, the Ombudsman and Associate Ombudsman learned that the only incident involving the Director and genitalia shaped cookies that HR was aware of was the alleged incident on March 14th. HR had not been aware of the Valentine's genitalia shaped cookies until they were informed by the Ombudsman's Office.

While the Ombudsman cannot say with 100% certainty that any of the St. Patrick's cookies were distributed at City Hall, given the statements of the six current and former MOA employees, and HR's conclusions regarding the St. Patrick's cookies, the Ombudsman finds that the preponderance of the evidence suggests that some of the St. Patrick's genitalia shaped cookies were distributed in City Hall. Does it really matter if the Director distributed genitalia

shaped cookies once or twice at City Hall? The Director acknowledged bringing the Valentine themed genitalia shaped cookies to City Hall. Whether genitalia shaped cookies were distributed once or twice, it was inappropriate and unprofessional, and unacceptable in an MOA workspace, even if the cookies were only distributed in an office, to employees that the Director considered to be her friends, and even if some of the employees who received cookies thought that they were humorous.

Was distributing genitalia shaped cookies to employees in a professional work environment at City Hall harassment? Yes, if any of the persons to whom the cookies were distributed felt harassed. While some of the concerns expressed regarding the cookies may have stemmed from workplace relationships gone bad after the former MOA Manager was fired, some of the employees stated that they felt that the cookies were inappropriate in the workplace and considered them to be harassment, a feeling that was exacerbated by the power differential between them and the Director. Those employees stated that they had felt a sense of helplessness because they believed that they were powerless to confront the Director or to report her, given the significant power differential, and the Director's perceived personal relationship with the Mayor. Several employees stated that they felt that it would be a waste of time to file complaints with HR or the Ombudsman's Office, because the Director was rumored to be on the Mayor's "no fire list". It is questionable if such a list exists but given the apparent lack of consequences for the Director's actions, multiple employees believed that such a list existed, and that belief dissuaded several of them from filing complaints with HR or the Ombudsman's Office.

Maintaining professional standards is important in any work environment. While the Director who distributed the cookies might have had no ill intent and may have believed that the cookies were funny and harmless, some of the persons to whom the cookies were distributed had very different perspectives – they felt harassed, embarrassed, and uncomfortable in a professional work environment where they should not have been made to feel harassed, embarrassed, and uncomfortable. As a government employer, the Municipality of Anchorage has an obligation to set an example by promoting and maintaining a professional work environment. Distributing genitalia shaped cookies to MOA employees in City Hall was inappropriate and unprofessional. While some of the cookie recipients may have thought that the cookies were humorous and harmless, the cookies made other MOA employees feel uncomfortable at work. Distributing genitalia shaped cookies at City Hall put the MOA in a potentially vulnerable position legally and financially. When texting with the individual who baked the Valentine's cookies for her, the Director texted "I'll bring a brown bag down with me to hide the 'fun' ones in so I don't get fired, Haha." This text message shows that the Director knew that bringing genitalia shaped cookies into City Hall to distribute to MOA employees was not appropriate, regardless of whether the Director considered those persons to be her friends. It also shows that she was aware that for most MOA employees distributing genitalia shaped cookies in City Hall could have resulted in termination of their employment with the MOA.

MOA Policy & Procedure 40-38, Unlawful Discrimination and Harassment, states that "It is the policy of the Municipality to provide a harmonious work environment free from discrimination

or harassment". During their interview with the Director, the Ombudsman and Associate Ombudsman asked the Director if she was aware of P&P 40-38 - she stated that she was unaware of the P&P. During the interview, the Director volunteered that she had "never harassed any municipal employee". Unfortunately, P&P 40-38 only prohibits discrimination or harassment based on the victim being a member of a protected class – the policy does not deal with general workplace harassment. While P&P 40-38 only addresses discrimination and harassment based on protected classes, it is the policy of the MOA to provide a harmonious, respectful, and harassment free work environment. In his July 13, 2023 EEO/AA Policy Statement Mayor Bronson noted that "Inappropriate or bullying behavior that may not rise to the level of illegality is equally unacceptable and will not be tolerated. I am personally committed to ensuring a workplace based on fairness, dignity and respect for all MOA employees and customers. I ask for all your support as we continually work together to make the MOA an environment free of discrimination and harassment for all employees and members of the community we serve, where everyone may feel safe, secure, and strong". This EEO/AA Policy Statement was again emailed to all MOA Directors on January 2, 2024, while the Ombudsman was drafting this report.

The Mayor's EEO/AA Policy Statement sets a high bar for the MOA – a bar that the MOA has failed to meet when it comes to the behavior of the Director. Words matter - in this instance the MOA has failed to live up to the words in the Mayor's EEO/AA Policy Statement, because when it comes to the actions of the Director, the MOA has not provided a work environment free of harassment and bullying over the past two+ years. The Municipality's failure to take appropriate action after multiple substantiated employee complaints has resulted in a process that has failed to adequately address and resolve the problems experienced by multiple current and former MOA employees. This is not fair to the MOA employees who have not been treated with "dignity and respect", or to the hardworking taxpayers who will have to pay for any potential legal settlements related to the Director's behavior. MOA employees should expect, and indeed have a legal right to, a workplace where they are treated with dignity and respect and are free from harassment and bullying.

Any allegations of harassment or bullying in any MOA workspace must be swiftly responded to and investigated. If an allegation is substantiated, appropriate action needs to be taken. Prompt, professional, impartial investigations and appropriate action are the cornerstones of any effective zero-tolerance harassment and anti-bullying policies, regardless of who the transgressor might be. The MOA has failed to live up to the standards articulated in the Mayor's EEO/AA Policy Statement; MOA employees and the community deserve better. MOA Legal asked the Ombudsman why he was adamant about including the investigation of this allegation in his report. The Ombudsman responded that his motivation was three-fold; 1) to validate the brave MOA employees who had filed complaints with HR, in spite of their fears of retaliation, and their belief that the complaints would not be adequately investigated, given that the HR Director had worn an "I'm With Judy" t-shirt to a meeting of the Library Advisory Board, which gave MOA employees the impression that the HR Director was prejudiced in favor of management; 2) to inform MOA employees and the public that HR had investigated the employee complaints that were filed with them regarding the Director, that HR had made

determinations, that HR had made recommendations, and that action had been taken; 3) to inform MOA employees and the public that HR, like the Ombudsman's Office, investigates complaints, makes determinations, and makes recommendations – it is up to the supervisor/director/agency head of the employee against whom a substantiated complaint is made to follow through with disciplinary action.

Based on his investigation and the preponderance of the available evidence, the Ombudsman determined that the allegation that the Municipality's Purchasing Director had distributed genitalia shaped cookies to employees at City Hall is JUSTIFIED.

Allegation #4, that the sole source contracting process for the Mayor's Senior Policy Advisor did not follow the requirements of Anchorage Title 7 and the relevant Purchasing Department policies and practices.

AMC 7.20.080 – Proprietary and non-competitive procurements states that “The purchasing officer may contract, without the use of the competitive source selection procedures of this chapter, for the following supplies, services, professional service or construction... For contracts where the purchasing officer determines in writing that the municipality's requirements reasonably limit the source for the supplies, services, professional service or construction to one person.” MOA departments desiring to implement a sole source purchase are required to submit a sole source memorandum to the Purchasing Director (Director) that provides justification for the request – the Director's signature or initials on the memorandum signifies their approval of the request and the sole source justification. The Assembly must approve all sole source contracts that exceed \$30,000. Each month, the Purchasing Department submits an Assembly Information Memorandum to the Assembly that lists all sole source purchases between \$10,000 and \$30,000, which do not require Assembly approval.

In July 2021, the MOA signed a contract with BSI Consulting, LLC, which is 100% owned by Larry Baker. Baker, through BSI, was contracted to fill the position of Senior Policy Advisor to the Mayor. Given Baker's extensive government experience, including serving in the Alaska Legislature, as a member of the Anchorage Assembly, and as Chief of Staff to Mayor Dan Sullivan, it is understandable that Mayor Bronson would desire to employ Baker as an advisor. However, because Baker is an Alaska Public Retirement System (PERS) beneficiary, he could not be hired as an employee of the MOA. Baker's initial contract was signed on July 30, 2021, with a term of July 1, 2021 – December 31, 2021. The amount of the contract was \$29,500, just under the threshold that required Assembly approval. The sole source memorandum from Municipal Manager Amy Demboski was dated July 1, 2021. The memorandum referenced Baker's previous government and business experience and referred to him as being “uniquely qualified to provide consulting services to the Mayor.” Nowhere in the memorandum does it state that Baker was the only person who could provide consulting services to the Mayor. The memorandum that was provided to the Ombudsman was not signed or initialed by the Director – her signature or initials on the memorandum is what signifies approval of the sole source

justification for the contract. The copy of the first Baker contract that was provided to the Ombudsman is not signed by the “Mayor or Designated Official.”

The justification in the sole source memorandum does not meet the requirements of AMC 7.20.080 – a situation that has occurred for many years across multiple administrations. Internal Audit, in their Internal Audit Report 2022-02, Sole Source Purchases, released on April 20, 2022, noted that 11% of the 184 sole purchases they had sampled had “questionable sole source purchase justifications.” This is a systemic problem that affects both the Executive and Legislative Branches of the MOA – the code needs to be revised to address the problem by allowing for other permissible justifications for sole source purchases. While the code states that the Director must attest in writing that only one person can provide the goods or services being provided for a sole source procurement, the reality is that it is not unusual for departments to request sole source purchases based on their personal vendor preferences and/or their desire to work with contractors with whom they have developed a good working relationship.

Baker signed a second contract on March 3, 2022; the contract was signed by the Chief of Staff and Purchasing Director the same day – the Municipal Attorney signed on March 23, 2022. The term of the contract was January 1, 2022 – July 31, 2022, with no gap between the end date of the first contract and the effective date of the second contract. The second contract was for the same amount as the first – \$29,500. What is startling about the second contract is that it was not signed until more than two months after the date the contract apparently commenced. It appears, based on the dates the parties signed the contract, that Baker worked for over two months without a signed contract. Contractors working without a signed contract has been problematic for the MOA on multiple occasions. Given that there is generally a 3-year statute of limitations to file a civil claim in Alaska, what would happen if someone filed a claim based on actions taken by Baker while acting as a contracted member of the Mayor’s staff, if he was working without a valid, signed contract? What are the parameters of confidentiality and privilege for documents and meetings that included Baker during the time that he was, as a private individual, acting as the Mayor’s Senior Policy Adviser? As a private individual, without a signed contract, Baker had an office in City Hall, an MOA computer and email address, access to the internal MOA computer systems, an MOA business card, and an MOA telephone number. This situation should not have occurred, and the MOA needs to ensure that it does not happen in the future with any MOA contractor.

On August 8, 2022, Baker, the Chief of Staff, the Acting Municipal Attorney, and the Purchasing Director all signed a third contract for \$29,500, with a term of August 4, 2022 – January 31, 2023, with a 3-day gap between the second and third contracts. The July 1, 2021 sole source memorandum was used as justification for all three sole source contracts. The complainant raised the issue of the back-to-back nature of the first two contracts and the short timeframe between the second and third contracts. The complainant stated to the Ombudsman that “there should have been at least 30 days between each of the contracts.” After reviewing Title

7 and speaking with Purchasing personnel, the Ombudsman determined that there is no such requirement in municipal code or policies. While the MOA's procurement card program prohibits splitting purchases to circumvent cardholders' limits, Title 7 does not contain any prohibitions on back-to-back sole source and open market procurements for the same services from the same vendor – which can be used to circumvent the requirement for Assembly approval. The Ombudsman believes that this omission is problematic - it enables MOA departments to write back-to-back sole source contracts for the same vendor and services to circumvent the requirements for Assembly approval. Writing three separate back-to-back contracts for the same vendor for the same services can reasonably be construed as an attempt to avoid Assembly approval. If the Baker contracts were indeed three separate contracts, why was the same sole source memorandum, dated July 1, 2022, used for all three contracts? Should the second and third contracts have been amendments to the first contract, which would have triggered the requirement for Assembly approval?

Should the back-to-back contracts have been aggregated and sent to the Assembly for approval? For many years it has been the (unwritten) policy of Purchasing to aggregate back-to-back sole source contracts with the same vendor for the same goods or services, and to request Assembly approval if the aggregated contracts exceed the threshold for Assembly approval. Not aggregating back-to-back contracts for the same contractor and same goods and services could be construed to be splitting purchases to keep the dollar amount under the threshold that requires Assembly approval. Purchasing's longstanding (unwritten) policy of aggregating back-to-back sole source contracts with the same vendor for the same goods or services was not followed for the Baker contracts. Had the contracts been aggregated, they would have totaled \$88,500 and would have required Assembly approval.

Regarding the Baker contracts, Internal Audit, on page 12 of Internal Audit Report 2023-04, Sole Source Purchases, noted that "Anchorage Municipal Code Title 7 could be strengthened. Specifically, AMC contains no guidelines regarding splitting of transactions and entering into separate contracts. Specifically, we found consecutive sole source contracts for services that, when combined, exceeded the AMC Title 7 threshold of \$30,000 for Assembly approval. As a result, some contracts appeared to circumvent reporting requirements for Assembly approval. For example, from July 2021 through January 2023, we found three separate, but consecutive 6 month-long, sole source contracts for consulting services for \$29,5000 apiece, totaling \$88,500, which appeared to circumvent the \$30,000 threshold for Assembly approval."

For all three of Baker's contracts, Section 8 – Indemnity was removed. The section states that "The Contractor shall indemnify, defend, save and hold the Municipality harmless from any claim, lawsuit or liability, including costs and attorney's fees allegedly arising from loss, damage or injury to persons or property occurring in the course of the Contractor's performance." Removal of this clause from the contract ensured that the MOA assumed legal and financial liability for Baker's actions as an MOA contractor while serving as the Mayor's contracted Senior Policy Advisor.

Given the back-to-back nature of the contracts, was Baker an independent contractor, was he on-retainer, or was he an MOA employee in all but name? The structure and timing of the Baker contracts raises questions related to municipal contracting that need to be addressed – the public needs to have faith that the municipal purchasing system is not being manipulated in ways that it should not be. The bottom line for this complaint is that the sole source justification does not conform to the requirements of AMC 7.20.080, and the back-to-back contracts were not aggregated as is Purchasing’s longstanding (unwritten) policy. The way the contracts were structured and processed could be construed by a reasonable person to have been part of an effort to circumvent the requirement for Assembly approval of the contracts. The problems identified during the investigation are related to how the MOA structured and processed Baker’s contracts, and don’t reflect on any actions by Baker or BSI Consulting, LLC.

Based on his investigation and the preponderance of the available evidence, the Ombudsman determined that the allegation that the sole source contracting process for the Mayor’s Senior Policy Advisor did not follow the requirements of Anchorage Title 7 and the relevant Purchasing Department policies and practices is JUSTIFIED.

Allegation #5, that the Mayor’s Senior Policy Advisor was retained as a contractor, rather than being hired as a municipal employee, to circumvent or defraud the State of Alaska Public Employees Retirement System.

In July 2021, the Bronson Administration signed a contract with BSI Consulting, LLC, which is 100% owned by Larry Baker. Baker, through BSI, was contracted to fill the position of Senior Policy Advisor to the Mayor. Given Baker’s extensive government experience, including serving in the Alaska Legislature, as a member of the Anchorage Assembly, and as Chief of Staff to Mayor Dan Sullivan, it is understandable that Mayor Bronson would desire to employ Baker as an advisor. However, because Baker is a Tier 1 Alaska Public Retirement System (PERS) retiree, he could not be hired as an employee of the MOA (or any other PERS employer). Baker’s initial contract was signed on July 30, 2021, with a term of July 1, 2021 – December 31, 2021. The amount of the contract was \$29,500, just under the threshold that required Assembly approval. The sole source memorandum from Municipal Manager, Amy Demboski, was dated July 1, 2021. The memorandum referenced Baker’s previous government and business experience and referred to him as being “uniquely qualified to provide consulting services to the Mayor.”

The complainant expressed concerns regarding the MOA’s contracts with Baker, questioning if he was hired as a contractor, rather than an employee, to circumvent or defraud PERS. As a PERS Tier 1 retiree Baker is prohibited from working in a PERS position while receiving PERS retirement benefits (Alaska Statute 39.35.150). However, the PERS website states that a PERS retiree may work “on a personal services contract with an Alaska PERS participating employer without affecting your retirement benefits assuming that you have had a bona fide separation...”. Baker had a bona fide separation, and while he could not work for the MOA as an

employee, the PERS rules allowed him to have a personal services contract with the MOA (or any other PERS employer).

While the PERS rules allowed Baker to have a personal services contract with the MOA, the Ombudsman's review of the matter raised several concerns and questions related to having a contractor fill a senior executive position with the MOA. Some of these concerns were expressed in the response to Allegation #4. The back-to-back nature of Baker's contracts, and the parameters of his position as the contracted Senior Policy Advisor to the Mayor, appear to have blurred the line between independent contractor and MOA employee. As an "independent contractor", Baker possessed an MOA computer, an MOA office, an MOA phone number, an MOA business card, an MOA nameplate on his office door, and a job title as a member of the Mayor's staff. Baker's activities were directed by the Mayor and Baker directed the activities of MOA employees. After reviewing the U.S. Internal Revenue Service's guidelines, titled "Independent Contractor (Self-Employed) or Employee?", it appears that the line between independent contractor and employee was blurred regarding Baker's contracted service with the MOA.

It is not up to the Ombudsman to make any determination whether Baker was a contractor or employee – it is up to the IRS or MOA Legal to make that determination. This situation is a matter that the Municipal Attorney's Office should analyze to protect the MOA from potential legal liability and sanctions. Another concern related to having an MOA senior executive position filled by a contractor is that AMC 1.15, the MOA's ethics code, did not apply to Baker as a contractor, nor did the Ethics Board have jurisdiction to inquire into his actions, as they have regarding every MOA and Anchorage School District employee. This means that the ethics code's prohibitions regarding political activities at City Hall and the use of MOA resources for political activities did not apply to Baker as a contractor.

The Ombudsman could not find any evidence to support the allegation that Baker was hired as a contractor, rather than an MOA employee, to circumvent or defraud PERS – as a PERS retiree Baker is allowed to have a personal services contract with a PERS employer. However, during his review, the Ombudsman became concerned about the processing and implementation of Baker's personal service contracts with the MOA. The Human Resources Department and Municipal Attorney's Office need to identify, review, and correct any deficiencies in code related to having contractors fill positions, especially executive and supervisory positions, that are normally filled by MOA employees. As the MOA continues to struggle with hiring and retaining employees, the potential need to hire more contracted employees in multiple departments makes it imperative that the MOA address the issues and concerns raised during the Ombudsman's investigation of this matter. The problems identified during the investigation of this allegation are related to how the MOA structured and processed the Baker contracts and how they structured his contracted position as a member of the Mayor's senior staff, and aren't reflective of any actions by Baker or BSI Consulting, LLC.

Based on his investigation and the preponderance of the available evidence, the Ombudsman determined that the allegation that the Mayor's Senior Policy Advisor was retained as a contractor, rather than being hired as a municipal employee, to circumvent or defraud the State of Alaska Public Employees Retirement System is NOT SUPPORTED.

Allegation #6, that the Mayor's Senior Policy Advisor pressured the former Municipal Attorney to have the municipal misdemeanor domestic violence charges involving his business partner dropped.

When he started his review of this allegation, the Ombudsman realized that if the complaint was justified, then a breach of duty or misconduct had most likely been occurred. The Ombudsman's Office is not a criminal investigative agency, and should refer matters to the MOA Attorney's Office, District Attorney, the Courts, or another agency for review and investigation if the Ombudsman reasonably believes that a breach of duty or misconduct may have taken place. However, an allegation alone is not sufficient to allow the Ombudsman to have a reasonable belief that a breach of duty or misconduct may have occurred. The Ombudsman's Office will not normally automatically refer a jurisdictional complaint to another agency simply because it might be related to a breach of duty or misconduct. The Ombudsman's Office will usually conduct a preliminary inquiry to determine if a breach of duty or misconduct might have occurred. An allegation is only an allegation until proven. It takes a certain level of investigation for the Ombudsman to be able to have a reasonable belief that a breach of duty or misconduct may have occurred, so that he can refer the matter to another agency for review and possible investigation.

In June 2019, Brandon Spoerhase, the business partner of Larry Baker, the Mayor's contracted Senior Policy Advisor, was charged with multiple domestic violence charges related to an individual who subsequently was hired as an executive with the MOA. The misdemeanor DV charges filed against Spoerhase were being prosecuted by the MOA Prosecutor's Office; the felony charges were being prosecuted by the State District Attorney's Office. The complainant alleged that Baker, while serving as the Mayor's contracted Senior Policy Advisor, had pressured the former MOA Attorney to drop the misdemeanor DV prosecution of Spoerhase, his business partner.

The complainant stated that the former MOA Attorney had personally informed them of Baker's efforts to pressure him into dropping the prosecution of Spoerhase. The complainant stated that the former MOA Attorney had told them that they had been appalled by Baker's actions and had come to them to discuss their concerns. Two other executives with the MOA contacted the Ombudsman and stated that they had been part of a conference call to strategize how to respond to this allegation after it had been reported in the media. Both executives stated that during the call an attorney with the MOA Attorney's Office had stated that they would not lie under oath regarding the matter; they would have to testify that the former MOA Attorney had informed them that Baker had pressured him to drop the misdemeanor DV

prosecution of Spoerhase. The Ombudsman interviewed the attorney that had been on the conference call, who no longer works for the MOA. The attorney confirmed that the statements of the two executives were accurate. The attorney stated that they did not have any first-hand information regarding the allegation that Baker had pressured the former MOA Attorney to drop the prosecution of Baker's business partner – their information was secondhand directly from the former MOA Attorney.

The Ombudsman spoke with the former MOA Attorney, who declined to respond to the Ombudsman's question whether Baker had pressured him to drop the misdemeanor prosecution of Spoerhase. The former MOA Attorney stated that he had consulted an attorney and that if he is subpoenaed as part of an investigation or trial, he would answer truthfully. The former MOA Attorney stated that he did not attempt to pressure the MOA Prosecutor regarding the DV charges involving Baker's business partner.

During his investigation of this allegation, the Ombudsman reviewed over 1,000 documents provided to him as part of a records request and could not find any evidence that directly supported the allegation. The Ombudsman asked Baker if he had pressured the former MOA Attorney to drop the DV charges against his business partner, or if he had discussed the charges with him. Baker responded that he had not pressured the former MOA Attorney to drop the charges. Baker stated that he had one conversation with the former MOA Attorney regarding the matter, when he advised him that he had a conflict regarding one of the Spoerhase cases because he had been called to testify in the case. He also stated that during the Administration's transition he had advised the former MOA Attorney and the Mayor that he had to recuse himself from any discussion regarding the potential hiring of the victim in the cases involving his business partner.

Given the statements from two former MOA executives that the former MOA Attorney had personally informed them that Baker had pressured him to drop the DV prosecution of Spoerhase, and Baker's denial regarding the allegation, the Ombudsman was unable to reach a definitive conclusion regarding the validity of this allegation. The Ombudsman realized that if he had been able to substantiate the allegation, it would have meant that a breach of duty or misconduct had likely occurred. Given the serious nature of the allegation, and the contradictory evidence, the Ombudsman referred the matter to another agency. AMC 2.60.170 – Misconduct by municipal personnel, states that "If the Ombudsman believes that there is a breach of duty or misconduct by an officer or employee of the municipality within the course and scope of the officer's or employee's official duties, the ombudsman may refer the matter to the appropriate department head, to the mayor, to the board of ethics, or, when appropriate, to the municipal prosecutor, district attorney, or any other agency." Baker was a contracted member of the Mayor's staff when the alleged behavior occurred, and consequently was considered an "agent of the municipality", which falls under the jurisdiction of the Ombudsman's Office.

Based on his investigation, the Ombudsman had a reasonable belief that a breach of duty or misconduct may have occurred, and he referred the matter to another agency for review and possible investigation.

Based on the investigation of this case, the Municipal Ombudsman recommends:

Allegation #1: That the Human Resources Department and Municipal Attorney's Office work collaboratively to determine if policy & procedures or code revisions need to be drafted and implemented that will clarify the Municipality's disciplinary options for employees who knowingly or willfully fail to follow the requirements of municipal code in the performance of their official duties, without eliminating the discretion necessary for many municipal employees to perform their job duties. Do the current Personnel Rules allow for disciplinary actions in these instances? ***No response to this recommendation was received.***

Allegation #2: No recommendation.

Allegation #3: No recommendation.

Allegation #4: Recommendations 1-3 were also provided for OM 2022-1287 –

1. That AMC 7.20.080 – Proprietary and non-competitive procurements be revised to make sole source contracting more practicable and allow for justifications other than only one person being qualified to provide the goods or services. ***The Administration accepted this recommendation for case OM 2022-1287.***
2. That the Purchasing Department and Municipal Attorney's Office collaboratively develop a sole source memo template that includes an approval/signature box for the Purchasing Director (or their designee). ***The Administration accepted this recommendation for case OM 2022-1287.***
3. That the Purchasing Department develop checklists for staff to use for sole source and open market procurements, and a checklist for departments to use for sole source procurements. ***The Administration accepted this recommendation for case OM 2022-1287.***
4. That Purchasing's internal policy of aggregating back-to-back sole sources contracts or open market procurements for the same vendor for the same services or goods be codified in Title 7 or a policy & procedure be developed and implemented. ***No response to this recommendation was received.***

Allegation #5:

1. That the Municipal Attorney's Office and Human Resources Department work collaboratively to identify and correct any deficiencies or omissions in AMC 1.15 – Code of Ethics related to the hiring of contractors to fill positions, especially executive and supervisory positions, that are normally filled by municipal employees. ***No response to this recommendation was received.***

2. That the Municipal Attorney's Office and Human Resources Department develop guidelines to ensure that the line between contracted employee and municipal employee are maintained. ***No response to this recommendation was received.***

Allegation #6: No recommendation.

A copy of the preliminary investigative report was provided to the Municipal Manager, Chief of Staff, Human Resources Director, Chief Fiscal Officer, Purchasing Director, Acting Health Department Director, and Municipal Attorney on Monday, January 22, 2024. Comments and responses were requested to be submitted by close of business on Monday, February 5th, so that the final investigative report could be issued on Tuesday, February 6th. The Municipal Attorney and Chief Fiscal Officer requested an extension of the deadline for comments and responses; the Ombudsman extended the deadline for comments and responses to the close of business on Thursday, February 8th, with the final investigative report to be issued on Friday, February 9th.

Late on the afternoon of February 8th, the Ombudsman received written comments from the Purchasing Director and a memorandum from the Municipal Attorney. Those documents are appended to this report, as required by code. The Municipal Attorney's Office also provided the Ombudsman with a 12-page legal memorandum regarding their concerns with the preliminary report. Legal's memorandum opined that the Ombudsman's Office must discontinue investigating the allegations that are the focus of this report, because "These Matters Have Been Brought to the Courts for Resolution". AMC 2.60.125.B lists the factors, that if present, mandate that the Ombudsman must decline or discontinue investigation. The final factor on the list (#9) is if "the matter has been brought to the courts for resolution or is in litigation." This final factor was added to the code in 2017, at the request of the Ombudsman's Office, to allow the Ombudsman's Office to decline investigation of a complaint when it is related to an open criminal case, or the complainant has filed a civil suit in court. This factor was supposed to have been listed under the "may" decline or discontinue list of factors, not the "shall" list.

Since 2017, the Ombudsman's Office, without any pushback from MOA Legal, has interpreted this requirement to apply if the complainant has brought the matter to the attention of the courts, or if the complainant is involved in an open criminal case that is related to their complaint. If the Ombudsman's Office must discontinue an investigation or decline to investigate a matter because one individual has filed a lawsuit, what about the multiple other persons who might wish to file complaints regarding the same matter? Policy & Procedure 40-14, Reporting Matters of Public Concern, states that MOA employees who wish to report a matter of public concern, and who reasonably fear retaliation by their supervisor or director, may report the matter to the Ombudsman's Office. However, given MOA Legal's current narrow interpretation of AMC 2.60.125.B.9, the Ombudsman's Office would not be able to assist those MOA employees if someone, other than those employees, had filed a civil suit that is related to the same matter of public concern that the MOA employees wished to report. The Ombudsman believed that Legal's narrow interpretation of this section of code was not in the best interests of the MOA or the public and would prevent the Ombudsman's Office from

responding to legitimate matters of public concern that MOA employees might bring to the attention of the Ombudsman's Office. For this reason, the Ombudsman supported moving the requirement of AMC 2.60.125.B.9 to the "may" section of AMC 2.60.125, where it was originally intended to be when the Ombudsman's Office requested that it be added to the code in 2017.

MOA Legal opined that if the Ombudsman issued this report, despite AMC 2.60.125.B.9, that the MOA might not indemnify him if a lawsuit was filed regarding the report. After consulting with Assembly Counsel and Legislative Counsel, it was determined that while the requirement of AMC 2.60.125.B.9 is a grey area, the issue could best be addressed by amending AMC 2.60, rather than issuing dueling legal opinions. A draft ordinance was crafted and was introduced at a Special Assembly Meeting on February 23rd, with a Public Hearing set for the Regular Assembly meeting on March 5th. A public hearing was held at the March 5th meeting, and the ordinance (AO 2024-25, accompanied by AM 203-2024) was discussed and was approved by the body on an 8-3 vote. The ordinance also clarified indemnification of the Ombudsman's Office and the jurisdiction of the Ombudsman's Office.

The Mayor vetoed AO 2024-25 on March 12, 2024. In his veto message, the Mayor expressed several concerns regarding the ordinance. The Assembly discussed overriding the Mayor's veto during their meeting on Tuesday, March 19th. Following a brief discussion and a statement from the Chair, the Assembly, by a vote of 9-3, overrode the Mayor's veto of AO 2024-25. Following the Assembly's override of the Mayor's veto, the Ombudsman issued this final investigative report for Ombudsman case OM2022-1383 on Wednesday, March 20th.

Based on these findings and these recommendations, this case is closed.

If you object to the Ombudsman's decision to decline, discontinue, or close this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C. 2.60.165.



Darrel W. Hess
Municipal Ombudsman

**ADMINISTRATION COMMENTS REGARDING
OMBUDSMAN CASE OM2022-1383
RECEIVED ON FEBRUARY 8, 2024**

Rachelle Alger

Darrel W. Hess
Ombudsman
Municipality of Anchorage
632 West 6th Avenue, Suite 100
Anchorage, AK 99501

Email: HessDW@muni.org

Re: Response to Draft Report in Matter 2022-1383

Dear Mr. Hess,

This letter responds to the draft report provided to me on January 31, 2024, and sets forth my objections to your proposed findings. Respectfully, the issuance of your report is entirely improper for the following reasons: (1) the matters addressed in your report are now the subject of contested litigation, meaning that your office is required to decline jurisdiction and defer the matter to the court proceeding per AMC 2.65.120¹; (2) your draft report relies upon and would publish information contained in an investigative file despite the fact that the investigation was not concluded and I have never been provided due process or the opportunity to respond to those allegations, or, in fact, to even see the file that you accessed; (3) the report addresses matters that are stale and were resolved early in 2022; (4) the report materially misrepresents the history of the BSI contracting process. Proceeding with the publication of this report exceeds the proper role of the office of Ombudsman, interferes in active litigation, and would be unfairly prejudicial to my character and reputation.

1. Municipal Code prohibits the Office of the Ombudsman from proceeding with this investigation or the publication of this report.

All or substantially all of the matters submitted to you in complaint 2022-1383 are now the subject of pending litigation brought by former Municipal employee Amy Demboski in litigation styled Demboski vs. Municipality of Anchorage, et al, 3AN-23-08132 CI. I attach a copy of that complaint for your reference. You will see that the Demboski complaint largely recycles the matters that were previously brought to your attention. As referenced above, the ordinance creating the Ombudsman's office specifically prohibits the Ombudsman from investigating matters that are

¹ The ombudsman shall decline to review or investigate, and shall cease investigation, upon written determination by the ombudsman that any of the following factors apply:... (9) The matter has been brought to the courts for resolution or is in litigation.

the subject of litigation. The ombudsman “shall decline to review or investigate, and shall cease investigation, upon written determination by the ombudsman that any of the following factors apply: . . . (9) The matter has been brought to the courts for resolution or is in litigation.”² The use of “shall” means that the requirement to cease your investigation is mandatory, not discretionary. If you proceed with the publication of this report, you will be acting in blatant disregard of the limits placed on your authority, and will be acting outside the scope of your position. You may wish to consult counsel regarding the implications of acting so far outside the clear scope of your delegated authority.

- (2) The draft report contains reference to material which is not public, which is prejudicial to my reputation, and to which I have been denied access.

The Ombudsman’s report deviates from the scope of the original complaint and delves into a variety of claimed concerns about my conduct in the workplace, and then goes on to describe the contents of HR investigative files into those alleged concerns. To be clear: (1) I was not notified of the investigations at the time they were supposedly ongoing; (2) I was not provided an opportunity to defend myself regarding those claims; and (3) I have never been provided access to the investigative materials, even though they have been shared with the Ombudsman. The information in the investigative files is not substantiated, is prejudicial to my reputation, and its publication is entirely unfair, violating my rights to due process. It is beyond my comprehension how the Ombudsman can believe it is proper to issue public findings damaging my reputation when the Ombudsman bases those findings on materials to which I have been denied access, and when I have not been afforded a chance to defend myself. The inclusion of this material (or reference to it) in the Ombudsman’s report would be entirely improper.

- (3) The Ombudsman’s report does nothing more than republish stale and inaccurate claims about events that were settled long ago.

As the draft report observes, it is true that I gave a few ribald, humorous cookies to close colleagues whom I considered friends. Based on the messages and conversations with all the individuals concerned, it was my reasonable belief that these offerings were a fun and welcome diversion from a stressful workplace – at no point was any objection expressed, and they seemed to be accepted in the humorous spirit in which they were intended. This incident occurred in a closed setting and did not have any impact on the workplace in general. To my dismay, one or more of those individuals are now attempting to cast this situation in an ominous or threatening light, for reasons which many reasonable people would consider to be plainly self-serving. To my even greater dismay, the Ombudsman seems to believe this minor matter warrants an additional round of public scolding and hand-wringing.

As the Ombudsman no doubt knows, I was approached by superiors shortly after the cookies were delivered, and advised that they were not appropriate for the workplace, even if in jest. I accepted that directive and there was no repeat of the offense. Under the law, an isolated incident like this does not rise to the level of actionable workplace harassment, and it is wholly irresponsible for the Ombudsman to reach that unwarranted conclusion in his report. Again, the Ombudsman should consult counsel before reaching such careless and inaccurate conclusions. It

² AMC 2.65.120(b)(9).

is mind boggling to me that, nearly two years later, this silly and unfortunate event is being rehashed for a second time, in a public setting, and in a scolding and prudish tone that is disproportionate to the "crime" committed. I have admitted the mistake, the incident has not reoccurred, and that should be the end of it.

- (4) The report materially misrepresents the history of the BSI contract.

Municipal Code section 7.20.080 permits sole source contracting for professional services when the municipality's requirements "reasonably limit the source" for the services to "one person." The Code does not limit sole source contracting to situations in which "only one person" can perform the services – a requirement that the Ombudsman has invented from whole cloth. As a practical matter, there is no service which is so specialized that it could be performed by only one person, as the ombudsman would interpret the rule. Rather, the code requires that the circumstances must be such that identifying a single contractor is "reasonable." Here, Amy Demboski identified a "uniquely qualified" individual to fill the role of Senior Policy Advisor, and even the Ombudsman acknowledges that, given Mr. Baker's "extensive government experience" it was "understandable" that Mayor Bronson would desire to employ him as an advisor. The "understandable" desire to hire a uniquely qualified policy advisor plainly meets the basic criteria for a reasonable sole source procurement. The Ombudsman's findings otherwise are plainly wrong.

Moreover, the Ombudsman materially misrepresents the purpose and impact of the "sole source audit" that is referenced in the report. To be clear, my office initiated the audit at my request. Moreover, the audit's findings regarding prior sole source procurements deal almost entirely with decisions made prior to this administration or my role in it. It is unfair and misleading to draw connections between my office, my work, and decisions made in the past by prior administrations.

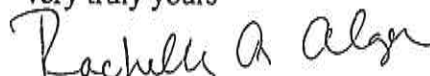
Similarly, the Ombudsman draws erroneous conclusions about the BSI contracting process and the renewals of the BSI agreement. The contracts were not structured to avoid procurement requirements. Rather, Mr. Baker was experiencing personal circumstances that prohibited him from making a long term commitment to his role. Thus, the initial contract was of a short initial duration and was extended as his circumstances permitted. The attempt to attach sinister motives to these extensions is unfair and unwarranted and the Ombudsman is engaging in pure speculation when he makes those allegations.

Finally, the deletion of "indemnity" language does not have the significance that the Ombudsman attempts to attach to it. First, the language modification was reviewed and approved by the City's legal department. Second, the notion that a policy advisor's work would create third party injuries or claims is fanciful. If Mr. Baker were performing physical work such as construction, paving, or the like, then one could see the potential for risk to third parties that would justify the inclusion of an indemnity provision. But in this case, advising the Mayor in an office setting simply does not implicate those types of risks, and the deletion of that unnecessary indemnity language was completely appropriate, approved by legal, and did not expose the Municipality to any unnecessary or unreasonable risk.

The Ombudsman's role is to protect the public by being an impartial investigator into questions of public administration. Instead, the Ombudsman seems eager to take sides in a dispute

brought by disgruntled former employees with a self-serving axe to grind. The Ombudsman's report is inaccurate, misleading, and harmful to the Municipality and to the reputations of those of us who have been caught in the crossfire.

Very truly yours


Rachelle Alger

Cc: Thomas Wang, Ashburn & Mason



MUNICIPALITY OF ANCHORAGE
Office of the Municipal Attorney
Memorandum

DATE: February 8, 2024
TO: Darrell Hess, Municipal Ombudsman
FROM: Anne Helzer, Municipal Attorney *(AH)*
SUBJECT: Requested Comments on Ombudsman Report for Ombudsman Case
OM 2022-1383

The Department of Law supports the Office of Ombudsman as it fulfills its important purpose within the Municipality of Anchorage with the goals of "safeguarding the rights of persons and of promoting higher standards of competency, efficiency and equity in the provision of municipal services." AMC 2.60.010.

The Department of Law makes no comment on or representations regarding any allegations, assertions of applicable law, or legal conclusions contained in the Ombudsman's Report for Ombudsman Case OM 2022-1383. The Department of Law has not seen or been asked to review any final, publicly released version of the Ombudsman's Report for Ombudsman Case OM 2022-1383.

Regarding the Municipal Ombudsman's recommendations, the Department of Law will continue to provide advice and assistance in response to requests from Municipal branches, departments, and agencies.

To improve public understanding of the Ombudsman's report, the Department of Law recommends the Municipal Ombudsman include the language of or a citation to Anchorage Municipal Code subsection 2.60.120G. that explains the meaning of the Ombudsman's official findings.