

Municipal Clerk's Office

Amended and Approved

Date: July 12, 2022

Mayoral Veto Given

Date: July 18, 2022

Mayoral Veto Overridden

Date: August 1, 2022

Submitted by: Assembly Vice Chair Constant

Prepared by: Assembly Counsel's Office

For reading (S): May 24, 2022

**ANCHORAGE, ALASKA**  
**AO No. 2022-60(S), As Amended**

1 **AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE**  
2 **MUNICIPAL CODE CHAPTERS 3.10, GENERAL PROVISIONS, AND 27.20,**  
3 **SUPERVISORY BOARDS, AND SECTIONS 2.70.030 AND 29.10.060 TO**  
4 **FULFILL THE REQUIREMENT OF ANCHORAGE MUNICIPAL CHARTER**  
5 **SECTION 7.01(b) THAT THE ASSEMBLY BY ORDINANCE MUST ESTABLISH**  
6 **SPECIFIC PROCEDURES FOR REMOVAL OF AN ELECTED OFFICIAL FOR**  
7 **BREACH OF THE PUBLIC TRUST.**

8  
9 **WHEREAS,** Anchorage Municipal Charter section 7.01(b) provides that an elected  
10 official may be removed “by two-thirds of the authorized membership of the  
11 assembly or school board,” when the elected official has breached the public trust;  
12 and

13  
14 **WHEREAS,** Anchorage Municipal Charter section 7.01(b) *further* provides, in part,  
15 “[t]he assembly by ordinance shall establish procedures for removal of elected  
16 officials for breach of the public trust, including provision for notice, a complete  
17 statement of the charge, a public hearing conducted by an impartial hearing officer,  
18 and judicial review”; and

19  
20 **WHEREAS,** constitutional provisions like Charter section 7.01(b), that allow the  
21 legislative branch to initiate removal of an executive officer, are not uncommon: the  
22 U.S. Congress can impeach and remove the president (U.S. Constitution, art. I,  
23 sections 2-3; art. II, section 4); the Alaska State Legislature can impeach and  
24 remove a Governor (Alaska Constitution, art. II, section 20); the state legislature of  
25 Nebraska, which like the Assembly is unicameral, can initiate impeachments that  
26 involve a fair hearing conducted by persons not in the legislative branch and include  
27 procedural safeguards similar to those proposed in AO 2022-60(S) (Nebraska  
28 Constitution, art. III, section 17); and in Alaska, the council or assembly of a  
29 general-law municipality may remove a mayor when certain conditions are met (AS  
30 29.20.280); and

31  
32 **WHEREAS,** consistent with Charter section 7.01(b), the Assembly has adopted  
33 procedures to govern the removal of assembly and school board members, but has  
34 not adopted procedures to govern the removal of elected service-area board  
35 members or the mayor, with the consequence that the requirements of section  
36 7.01(b) have only been partly fulfilled; and

37  
38 **WHEREAS,** “recall” by voters is a separate process from “removal,” and is  
39 addressed in Charter section 3.03, not section 7.01; and

40  
41 **WHEREAS,** the Assembly’s adoption of Anchorage Municipal Code chapter 2.50,  
42 which addresses recall by voters, does not fulfill the Charter section 7.01(b)

1 mandate to establish procedures for removal of elected officials “by a majority of all  
2 members of the assembly, or the school board in the case of removal of a school  
3 board member”; and  
4

5 **WHEREAS**, the Assembly has by ordinance established procedures by which an  
6 assembly member or school board member may be removed for a breach of the  
7 public trust in Anchorage Municipal Code section 2.70.030, *Removal from office*,  
8 and AMC section 29.10.060, *Removal of members from office*, which could be  
9 updated for efficiency; and  
10

11 **WHEREAS**, the Charter requires enactment of similar provisions applicable to other  
12 elected officials, including supervisory boards of service areas and the mayor; and  
13

14 **WHEREAS**, this Ordinance would apply to these elected officials provisions similar  
15 to those currently applicable to assembly and school board members; and  
16

17 **WHEREAS**, this ordinance will not have significant economic effects; now,  
18 therefore,  
19

20 **THE ANCHORAGE ASSEMBLY ORDAINS:**  
21

22 **Section 1.** Anchorage Municipal Code section 27.20.070 is hereby amended as  
23 follows (*the remainder of the section is not affected and therefore not set out*):  
24

25 **27.20.070 Vacancies generally; unexcused absences.**  
26

27 A. The office of an elected member of a supervisory board established  
28 under this chapter shall become vacant in the same manner as an  
29 elected office becomes vacant as provided in section 7.01(a) of the  
30 Charter. In addition, a [A] vacancy shall occur on the failure of a  
31 member to:  
32

- 33 1. Attend three consecutive regular or special meetings  
34 without excuse; or
- 35 2. Attend a two-thirds majority of the regular and special  
36 meetings during any calendar year without excuse.  
37

38 \*\*\* \*\*\* \*\*\*

39 (CAC 2.64.060)  
40

41 **Section 2.** Anchorage Municipal Code chapter 27.20, *Supervisory Boards*, is  
42 hereby amended to add a new section 27.20.085 to read as follows:  
43

44 **27.20.085 Removal from office.**  
45

46 An elected member of a supervisory board established under this chapter

1 may be removed from office for breach of the public trust following the  
 2 procedures set forth in this section.

3  
 4 A. **Willful and knowing breach of duty or culpable indifference to**  
 5 **official duties may constitute a breach of the public trust.** For  
 6 the purposes of this section actions constituting a breach of the  
 7 public trust shall include, **but are not limited to:**

- 8  
 9 1. Acceptance of cash gifts from one doing business with the  
 10 member's service area [municipality];  
 11 2. Violation of chapter 1.15;  
 12 3. Perjury;  
 13 4. Falsification of records;  
 14 5. Filing false reports;  
 15 6. Nepotism;  
 16 7. Making personal use of municipal or school district property;  
 17 8. Destruction of municipal or school district property;  
 18 9. ~~[Official oppression;~~  
 19 ~~10.]~~ Actual or attempted official misconduct, as defined by state law;  
 20 ~~10[41].~~ Ordering a municipal employee or contractor employed by the  
 21 supervisory board to undertake an unlawful act;  
 22 ~~11[42].~~ Substantial breach of a statutory-, Code- or Charter-imposed  
 23 duty.  
 24

25 B. Proceedings for removal from office **may only [shall]** be initiated by  
 26 delivery of an accusation document to the municipal clerk setting forth  
 27 the grounds for removal and specifying if delivery is to the assembly  
 28 or the board of ethics. An accusation document may be submitted to  
 29 the municipal clerk only by a majority vote of the assembly or decision  
 30 of the municipal board of ethics and must allege specific actions by  
 31 the member that breach the public trust.  
 32

33 C. After a successful vote to submit it, the municipal clerk shall cause a  
 34 copy of the accusation document to be served on the member in the  
 35 same manner as service of process under Alaska Rules of Civil  
 36 Procedure, and a copy delivered to the municipal attorney.  
 37

38 D. The municipal attorney shall review the accusation document for legal  
 39 sufficiency. The municipal attorney shall determine the legal  
 40 sufficiency of the allegations within ten days of receipt of the  
 41 accusation document. If the municipal attorney determines that the  
 42 allegations are legally insufficient, the removal action shall be  
 43 discontinued. The municipal attorney's determination, if it rejects the  
 44 accusation document, may be appealed to the superior court within 30  
 45 days. No interlocutory appeal is permitted from a determination by the  
 46 municipal attorney that the accusation document is legally sufficient.

1 Following a determination by the municipal attorney that the  
2 accusation document is legally sufficient, it shall be delivered to the  
3 municipal administrative hearings office established by Title 14, and  
4 the municipality shall employ an attorney of the member's choice,  
5 subject to the limitations of this subsection, to defend the charges. The  
6 attorney selected must be engaged in the active practice of law in the  
7 state. The fees charged by the attorney must be reasonable in both  
8 the rate and the amount of time expended. Reasonableness shall be  
9 evaluated in accordance with Alaska Bar Rule 35 and shall be subject  
10 to fee arbitration under the Alaska Bar Rules if the municipality  
11 disputes the reasonableness of the fees claimed.  
12

13 E. A hearing conducted by the municipal administrative hearing officer  
14 shall be held no later than 30 days following appointment of the  
15 hearing officer. The hearing shall be open to the public and, unless  
16 otherwise provided in this section, shall be conducted in accordance  
17 with the procedures set forth in chapter 3.60, **however the hearing**  
18 **officer shall expedite the matter within the required times set**  
19 **forth in this section and chapter 3.60 and shall grant extensions**  
20 **only for good cause. Good cause must be based upon matters**  
21 **either beyond the control of the party making application or**  
22 **conditions which would create a significant hardship if a**  
23 **continuance is not granted.** Within ten days following the conclusion  
24 of the public hearing the hearing officer shall submit written findings  
25 and recommendations to the assembly. The recommendations shall  
26 include whether the member should be removed.  
27

28 F. The standard of proof of the allegations in the accusation document to  
29 be applied by the hearing officer is *clear and convincing* [~~proof by a~~  
30 ~~preponderance of the~~] evidence. The hearing officer shall evaluate the  
31 evidence relating to the accusations set forth in the accusation  
32 document and evaluate both whether the allegations are supported  
33 and whether those actions alleged constitute a breach of the public  
34 trust as set forth in subsection A. of this section. Wrongful acts or  
35 admissions occurring while the member was acting in a private  
36 capacity as opposed to in a capacity as a public officer shall not  
37 constitute a breach of the public trust. ~~[Willful and knowing breach~~  
38 ~~of duty or culpable indifference to official duties may constitute~~  
39 ~~a breach of the public trust.]~~  
40

41 G. Within ten days of receiving the hearing officer's recommendations,  
42 the assembly shall vote on whether to remove the member who is the  
43 subject of the accusation document. Removal shall occur only on the  
44 concurrence of two-thirds of the fully constituted body.  
45

1 H. The decision of the assembly acting upon the recommendations of the  
 2 hearing officer may be appealed to the superior court within 30 days  
 3 of the assembly's decision. If the assembly's decision is for removal,  
 4 the office shall be considered vacant beginning at 12:01 a.m. seven  
 5 days following the decision unless the appellate court issues a stay of  
 6 the removal pending appeal. In evaluating whether to grant a stay of  
 7 removal pending appeal, the fact that another individual may be  
 8 seated as acting member shall not constitute irreparable harm. During  
 9 a stay, the seat may be temporarily filled pending the outcome of the  
 10 court case using the procedures in section 27.20.080. If, after  
 11 exhaustion of appeals, the final ruling reverses the removal, the  
 12 removed member shall be resealed for the remainder of the term for  
 13 which the member was elected, and the acting member shall be  
 14 displaced.

15  
 16 I. The assembly shall submit specific written findings for the record  
 17 showing good cause in the event that the assembly intends to reject  
 18 the hearing officer's recommendation.  
 19

20 **Section 3.** Anchorage Municipal Code chapter 3.10, *General Provisions,*  
 21 *(Reserved)* is hereby amended to rename the chapter and to add a new section  
 22 3.10.050 to read as follows:

23  
 24 **Chapter 3.10 - GENERAL PROVISIONS [(RESERVED)]**

25 \*\*\* \*\*

26 **3.10.050 Removal from office.**

27  
 28 The mayor may be removed from office for breach of the public trust following  
 29 the procedures set forth in this section:

30  
 31 A. **Willful and knowing breach of duty or culpable indifference to**  
 32 **official duties may constitute a breach of the public trust.** For the  
 33 purposes of this section actions constituting a breach of the public trust  
 34 shall include, **but are not limited to:**

- 35  
 36 1. Acceptance of cash gifts from one doing business with the  
 37 municipality;  
 38 2. Violation of chapter 1.15;  
 39 3. Perjury;  
 40 4. Falsification of records;  
 41 5. Filing false reports;  
 42 6. Nepotism;  
 43 7. Making personal use of municipal or school district property;  
 44 8. Destruction of municipal or school district property;  
 45 9. *[Official oppression;*  
 46 ~~10.]~~ Actual or attempted official misconduct, as defined by state law;

1 10[44].Ordering, or knowingly allowing a person appointed by the  
 2 mayor to order, a municipal employee to undertake an unlawful  
 3 act;

4 11[42].Substantial breach of a statutory-, Code- or Charter-imposed  
 5 duty;

6 12[43].Failure to faithfully execute the directives of a duly enacted  
 7 ordinance.  
 8

9 B. Proceedings for removal from office **may only [shall]** be initiated by  
 10 delivery of an accusation document to the municipal clerk setting forth  
 11 the grounds for removal and specifying if delivery is to the assembly  
 12 or the board of ethics. An accusation document may be submitted to  
 13 the municipal clerk only by a majority vote of the assembly or decision  
 14 of the municipal board of ethics and must allege specific actions by  
 15 the mayor that breach the public trust.  
 16

17 C. After a successful vote to submit it, the municipal clerk shall cause a  
 18 copy of the accusation document to be delivered by personal service  
 19 to the mayor and a copy delivered to the municipal attorney.  
 20

21 D. The municipal attorney, or an impartial third-party attorney retained by  
 22 the Assembly to serve as special counsel, shall review the accusation  
 23 document for legal sufficiency. An accusation approved by the  
 24 assembly shall specify whether the accusation shall be reviewed for  
 25 legal sufficiency by the municipal attorney or special counsel. The  
 26 municipal attorney, or the retained special counsel, shall determine  
 27 the legal sufficiency of the allegations within ten days of receipt of the  
 28 accusation document. If the municipal attorney, or special counsel,  
 29 determines that the allegations are legally insufficient, the removal  
 30 action shall be discontinued. The municipal attorney's or special  
 31 counsel's determination, if it rejects the accusation document, may be  
 32 appealed to the superior court within 30 days. No interlocutory appeal  
 33 is permitted from a determination by the municipal attorney or special  
 34 counsel that the accusation document is legally sufficient. Following a  
 35 determination by the municipal attorney or special counsel that the  
 36 accusation document is legally sufficient, the municipality shall employ  
 37 an attorney of the mayor's choice, subject to the limitations of this  
 38 subsection, to defend the charges. The attorney selected must be  
 39 engaged in the active practice of law in the state. The fees charged by  
 40 the attorney must be reasonable in both the rate and the amount of  
 41 time expended. Reasonableness shall be evaluated in accordance  
 42 with Alaska Bar Rule 35 and shall be subject to fee arbitration under  
 43 the Alaska Bar Rules if the municipality disputes the reasonableness  
 44 of the fees claimed.  
 45

- 1 E. Within two weeks following the service of an accusation document, the  
2 municipal clerk shall request that six names be submitted as potential  
3 hearing officers by the American Arbitration Association unless  
4 otherwise mutually agreed to by the assembly and the mayor. Three  
5 of the names submitted should be from the state and three from out-  
6 of-state. From these names the assembly and the mayor shall agree  
7 upon a hearing officer who shall conduct the hearing concerning the  
8 allegations in the accusation document. If no agreement is reached  
9 within ten days of distribution of the list of potential hearing officers,  
10 the hearing officer shall be selected by each side exercising  
11 preemptory challenges to the six potential names in turn until only one  
12 remains.
- 13
- 14 F. A hearing conducted by the appointed hearing officer shall be held no  
15 later than 30 days following appointment of the hearing officer. The  
16 hearing shall be open to the public and, unless otherwise provided in  
17 this section, shall be conducted in accordance with the procedures set  
18 forth in chapter 3.60, **however the hearing officer shall expedite the**  
19 **matter within the required times set forth in this section and**  
20 **chapter 3.60 and shall grant extensions only for good cause.**  
21 **Good cause must be based upon matters either beyond the**  
22 **control of the party making application or conditions which**  
23 **would create a significant hardship if a continuance is not**  
24 **granted.** Within ten days following the conclusion of the public hearing  
25 the hearing officer shall submit written findings and recommendations  
26 to the assembly. The recommendations shall include whether the  
27 mayor should be removed.
- 28
- 29 G. The standard of proof of the allegations in the accusation document to  
30 be applied by the hearing officer is *clear and convincing* [~~proof by a~~  
31 ~~preponderance of the~~] evidence. The hearing officer shall evaluate the  
32 evidence relating to the accusations set forth in the accusation  
33 document and evaluate both whether the allegations are supported  
34 and whether those actions alleged constitute a breach of the public  
35 trust as set forth in subsection A. of this section. Wrongful acts or  
36 admissions occurring while the mayor was acting in a private capacity  
37 as opposed to in a capacity as a public officer shall not constitute a  
38 breach of the public trust. ~~[Willful and knowing breach of duty or~~  
39 ~~culpable indifference to official duties may constitute a breach of~~  
40 ~~the public trust.]~~
- 41
- 42 H. Within ten days of receiving the hearing officer's recommendations,  
43 the assembly shall vote on whether to remove the mayor. Removal  
44 shall occur only on the concurrence of two-thirds of the fully  
45 constituted body.
- 46



1 assembly or the board of ethics. An accusation document may be  
2 submitted to the municipal clerk only by a majority [TWO-THIRDS]  
3 vote of the assembly or [TWO-THIRDS MAJORITY] decision of the  
4 municipal board of ethics and must allege specific actions by the  
5 assembly member in question which breach the public trust.  
6

7 C. After a successful vote to submit it, the municipal clerk shall cause a  
8 copy of the accusation document to [MUST] be delivered by personal  
9 service to the member of the assembly who is the subject of the  
10 accusation document and a copy delivered to the municipal attorney.  
11

12 D. The municipal attorney shall review the accusation document for legal  
13 sufficiency. The municipal attorney shall determine the legal  
14 sufficiency of the allegations within ten days of receipt of the  
15 accusation document. If the municipal attorney determines that the  
16 allegations are legally insufficient, the removal action shall be  
17 discontinued. The municipal attorney's determination, if it rejects the  
18 accusation document, may be appealed to the superior court within 30  
19 days. No interlocutory appeal is permitted from a determination by the  
20 municipal attorney that the accusation document is legally sufficient.  
21 Following a determination by the municipal attorney that the  
22 accusation document is legally sufficient, the municipality shall employ  
23 an attorney of the accused's choice, subject to the limitations of this  
24 subsection, to defend the charges. The attorney selected must be  
25 engaged in the active practice of law in the state. The fees charged by  
26 the attorney must be reasonable in both the rate and the amount of  
27 time expended. Reasonableness shall be evaluated in accordance  
28 with Alaska Bar Rule 35 and shall be subject to fee arbitration under  
29 the Alaska Bar Rules if the municipality disputes the reasonableness  
30 of the fees claimed.  
31

32 E. Within two weeks following the delivery of an accusation document,  
33 the municipal clerk shall request that six names be submitted as  
34 potential hearing officers by the American Arbitration Association.  
35 Three of the names submitted should be from the state and three from  
36 out-of-state. From these names the assembly and the accused shall  
37 agree upon a hearing officer who shall conduct the hearing concerning  
38 the allegations in the accusation document. If [, OR, IF] no agreement  
39 is reached within ten days of distribution of the list of potential hearing  
40 officers, the hearing officer shall be selected by each side exercising  
41 preemptory challenges to the six potential names in turn until only one  
42 remains [THE MUNICIPAL CLERK SHALL SELECT A HEARING  
43 OFFICER FROM THE LIST WHO SHALL CONDUCT A HEARING  
44 CONCERNING THE ACCUSATIONS CONTAINED IN THE  
45 DOCUMENT FILED WITH THE MUNICIPAL CLERK AND SHALL  
46 PROVIDE A RECOMMENDATION TO THE ASSEMBLY]. If more

1 than one assembly member is the subject of the accusation document  
 2 or the alleged breach arises out of the same event, the same hearing  
 3 officer shall hear those matters and may hold one consolidated  
 4 hearing.

5  
 6 F. A hearing conducted by the appointed hearing officer shall be held no  
 7 later than 30 days following appointment of the hearing officer. The  
 8 hearing shall be open to the public and, unless otherwise provided in  
 9 this section, shall be conducted in accordance with the procedures set  
 10 forth in chapter 3.60, **however the hearing officer shall expedite the**  
 11 **matter within the required times set forth in this section and**  
 12 **chapter 3.60 and shall grant extensions only for good cause.**  
 13 **Good cause must be based upon matters either beyond the**  
 14 **control of the party making application or conditions which**  
 15 **would create a significant hardship if a continuance is not**  
 16 **granted.** Within ten days following the conclusion of the public hearing  
 17 the hearing officer shall submit written findings and recommendations  
 18 to the assembly. The recommendations shall include whether the  
 19 officer should be removed.

20  
 21 G. The standard of proof of the allegations in the accusation document to  
 22 be applied by the hearing officer is *clear and convincing* [~~proof by a~~  
 23 ~~preponderance of the~~] evidence. The hearing officer shall evaluate the  
 24 evidence relating to the accusations set forth in the accusation  
 25 document and evaluate both whether the allegations are supported  
 26 and whether those actions alleged constitute a breach of the public  
 27 trust as set forth in subsection A of this section. Wrongful acts or  
 28 admissions occurring while the officer was acting in a private capacity  
 29 as opposed to his capacity as a public officer shall not constitute a  
 30 breach of the public trust. **[WILLFUL AND KNOWING BREACH OF**  
 31 **DUTY OR CULPABLE INDIFFERENCE TO OFFICIAL DUTIES MAY**  
 32 **CONSTITUTE A BREACH OF THE PUBLIC TRUST.]**

33 \*\*\* \*\*\* \*\*\*

34 I. The decision of the assembly acting upon the recommendations of the  
 35 hearing officer may be appealed to the superior court within 30 days  
 36 of the assembly's decision. If the assembly's decision is for removal,  
 37 the office shall be considered vacant beginning at 12:01 a.m. seven  
 38 days following the decision unless the appellate court issues a stay of  
 39 the removal pending appeal. In evaluating whether to grant a stay of  
 40 removal pending appeal the facts that the removed member could  
 41 miss important votes and that another individual may be seated to  
 42 replace the removed member shall not constitute irreparable harm.  
 43 During a stay, unless otherwise ordered by the court the seat is  
 44 considered vacant and shall be filled in accordance with Charter  
 45 7.02(b) and section 2.70.020 pending the outcome of the court case.  
 46 If, after exhaustion of appeals, the final ruling reverses the removal,

1 the removed member shall be reelected for the remainder of the term  
2 for which elected, and any replacement, whether appointed or elected  
3 at a special election, shall be displaced.

4  
5 J. The assembly shall submit specific written findings for the record  
6 showing good cause in the event that the assembly intends to reject  
7 the hearing officer's recommendation.

8  
9 (AO No. 93-54(S-1), 5-5-93)

10  
11 **Section 5.** Anchorage Municipal Code section 29.10.060, *Removal of members*  
12 *from office*, is hereby amended as follows (*the remainder of the section is not*  
13 *affected and therefore not set out*):

14  
15 **29.10.060 - Removal of members from office.**

16  
17 A member of the school board may be removed from office for breach of the  
18 public trust following the procedures set forth in this section.

19  
20 A. **Willful and knowing breach of duty or culpable indifference to**  
21 **official duties may constitute a breach of the public trust.** For the  
22 purposes of this section, actions constituting a breach of the public  
23 trust shall include, **but are not limited to:**

- 24 \*\*\* \*\*
- 25 9. *[OFFICIAL OPPRESSION;*
- 26 10]. **Actual or attempted official misconduct, as defined by**
- 27 **state law;**
- 28 ~~10[11].~~ Unexcused absence from three consecutive meetings;
- 29 ~~11[12]~~**[11].** Failure to attend 75 percent of meetings in a 24-month
- 30 period; or
- 31 ~~12[13]~~**[12].** Substantial b[B]reach of a statutory-, Code- or Charter-
- 32 imposed duty.

33  
34 B. Proceedings for removal from office **may only [SHALL]** be initiated  
35 by delivery of an accusation document to the municipal clerk setting  
36 forth the grounds for removal and specifying if delivery is to the school  
37 board or the board of ethics. An accusation document may be  
38 submitted to municipal clerk only by a majority [TWO-THIRDS] vote of  
39 the school board or a [TWO-THIRDS MAJORITY] decision of the  
40 municipal board of ethics and must allege specific actions by the  
41 school board member in question which breach the public trust.

42  
43 C. After a successful vote to submit it, the municipal clerk shall cause a  
44 copy of the accusation document to [MUST] be delivered by personal  
45 service to the members of the school board who are the subjects of  
46 the accusation document and a copy delivered to the municipal

1                    attorney.

2  
3            D.     The municipal attorney shall review the accusation document for legal  
4                    sufficiency. The municipal attorney shall determine the legal  
5                    sufficiency of the allegations within ten days of receipt of the  
6                    accusation document. If the municipal attorney determines that the  
7                    allegations are legally insufficient, the removal action shall be  
8                    discontinued. The municipal attorney's determination, if it rejects the  
9                    accusation document, may be appealed to the superior court within 30  
10                   days. No interlocutory appeal is permitted from a determination by the  
11                   municipal attorney that the accusation document is legally sufficient.  
12                   Following a determination by the municipal attorney that the  
13                   accusation document is legally sufficient, the school board shall  
14                   employ an attorney of the accused's choice, subject to the limitations  
15                   of this subsection, to defend the charges. The attorney selected must  
16                   be engaged in the active practice of law in the state. The fees charged  
17                   by the attorney must be reasonable in both the rate and the amount of  
18                   time expended. Reasonableness shall be evaluated in accordance  
19                   with Alaska Bar Rule 35 and shall be subject to fee arbitration under  
20                   the Alaska Bar Rules if the school district disputes the reasonableness  
21                   of the fees claimed.

22  
23            E.     Within two weeks following the service [DELIVERY] of an accusation  
24                   document, the municipal clerk shall request six names be submitted  
25                   as potential hearing officers by the American Arbitration Association.  
26                   Three of the names submitted should be from the state and three from  
27                   out of state. From these names the school board and the accused  
28                   shall agree upon a hearing officer who shall conduct the hearing  
29                   concerning the allegations in the accusation document. If [, OR, IF] no  
30                   agreement is reached within ten days of distribution of the list of  
31                   potential hearing officers, the hearing officer shall be selected by each  
32                   side exercising preemptory challenges to the six potential names in  
33                   turn until only one remains [THE MUNICIPAL CLERK SHALL  
34                   SELECT A HEARING OFFICER FROM THE LIST, WHO SHALL  
35                   CONDUCT A HEARING CONCERNING THE ACCUSATIONS  
36                   CONTAINED IN THE DOCUMENT FILED WITH THE MUNICIPAL  
37                   CLERK AND SHALL PROVIDE A RECOMMENDATION TO THE  
38                   SCHOOL BOARD]. If more than one school board member is the  
39                   subject of the accusation document or the alleged breach arises out  
40                   of the same event, the same hearing officer shall hear those matters  
41                   and may hold one consolidated hearing.

42  
43            F.     A hearing conducted by an appointed hearing officer shall be held no  
44                   later than 30 days following appointment of the hearing officer. The  
45                   hearing shall be open to the public and, unless otherwise provided in  
46                   this section, shall be conducted in accordance with the procedures set

1           forth in chapter 3.60, **however the hearing officer shall expedite the**  
 2           **matter within the required times set forth in this section and**  
 3           **chapter 3.60 and shall grant extensions only for good cause.**  
 4           **Good cause must be based upon matters either beyond the**  
 5           **control of the party making application or conditions which**  
 6           **would create a significant hardship if a continuance is not**  
 7           **granted.** Within ten days following the conclusion of the public  
 8           hearing, the hearing officer shall submit written findings and  
 9           recommendations to the school board. The recommendations shall  
 10          include whether the official should be removed.

11  
 12          G.     The standard of proof of the allegations in the accusation document to  
 13               be applied by the hearing officer is clear and convincing [proof by a  
 14               preponderance of the] evidence. The hearing officer shall evaluate the  
 15               evidence relating to the accusations set forth in the accusation  
 16               document and evaluate both whether the allegations are supported  
 17               and whether those actions alleged constitute a breach of the public  
 18               trust. Wrongful acts or admissions occurring while the officer was  
 19               acting in a private capacity as opposed to his capacity as a public  
 20               officer shall not constitute a breach of the public trust as set forth in  
 21               subsection A of this section. **WILLFUL AND KNOWING BREACH OF**  
 22               **DUTY OR CULPABLE INDIFFERENCE TO OFFICIAL DUTIES MAY**  
 23               **CONSTITUTE A BREACH OF THE PUBLIC TRUST.]**

24               \*\*\*                               \*\*\*                               \*\*\*

25          I.     The decision of the school board acting upon the recommendations of  
 26               the hearing officer may be appealed to the superior court within 30  
 27               days of the school board's decision. If the school board's decision is  
 28               for removal, the office shall be considered vacant beginning at 12:01  
 29               a.m. seven days following the decision unless the appellate court  
 30               issues a stay of the removal pending appeal. In evaluating whether to  
 31               grant a stay of removal pending appeal the facts that the removed  
 32               member could miss important votes or that another individual may be  
 33               seated to replace the removed member shall not constitute irreparable  
 34               harm. During a stay, unless otherwise ordered by the court the seat is  
 35               considered vacant and shall be filled in accordance with Charter  
 36               7.02(a) pending the outcome of the court case. If, after exhaustion of  
 37               appeals, the final ruling reverses the removal, the removed member  
 38               shall be reseated for the remainder of the term for which elected, and  
 39               any replacement, whether appointed or elected at a special election,  
 40               shall be displaced.

41  
 42          J.     The school board shall submit specific written findings for the record  
 43               showing good cause in the event that the school board intends to  
 44               reject the hearing officer's recommendation.

45  
 46          (AO No. 93-54(S-1), 5-5-93)

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**Section 6.** This ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 12th day of July, 2022.

*Christopher Constant*

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Chair

ATTEST:

*Barbara A. Jones*

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Municipal Clerk



# MUNICIPALITY OF ANCHORAGE

## ASSEMBLY MEMORANDUM

No. AM 326-2022

Meeting Date: June 1, 2022

1 **FROM:** Assembly Vice Chair Constant

2  
3 **SUBJECT:** AO 2022-60(S): AN ORDINANCE OF THE ANCHORAGE  
4 **ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE**  
5 **CHAPTERS 3.10 GENERAL PROVISIONS (RESERVED)**  
6 **AND 27.20 SUPERVISORY BOARDS, AND SECTIONS**  
7 **2.70.030 AND 29.10.060, TO FULFILL THE REQUIREMENT**  
8 **OF ANCHORAGE MUNICIPAL CHARTER SECTION 7.01(b)**  
9 **THAT THE ASSEMBLY BY ORDINANCE MUST ESTABLISH**  
10 **SPECIFIC PROCEDURES FOR REMOVAL OF ELECTED**  
11 **OFFICIALS FOR BREACH OF THE PUBLIC TRUST.**  
12

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13  
14 The S-version makes some changes that improve the ordinance and the  
15 existing code sections for removal of elected Assembly and School Board  
16 members. The significant changes from the original Ordinance, and identical in  
17 each of the sections for each type of elected official, include:  
18

- 19 • Moving the mental state element language—"willful and knowing breach of  
20 duty or culpable indifference to official duties"—from the subsection  
21 establishing the standard of proof for the hearing officer to the first  
22 subsection that lists the actions which constitute grounds for a breach of the  
23 public trust accusation. This change improves Code integrity by setting  
24 forth the elements and grounds in one subsection, rather than buried later  
25 in the subsections outlining procedural steps. Assembly Counsel  
26 recommended this change. (p. 2 line 22; p. 4 line 44; p. 7 line 37; p. 10 line  
27 24)
- 28 • Include the phrase "but are not limited to" as a lead-in to the list of actions  
29 that may constitute a breach of the public trust. Assembly Counsel advises  
30 that the real offense is the breach of the public trust and as a matter of law  
31 there may be other action not listed which may, based on precedent,  
32 common law, or the nature and severity of the action, be found by the  
33 hearing officer to also be a breach of the public trust although not listed. (p.  
34 2 line 25; p. 5 line 2; p. 7 line 40; p. 10 line 27)
- 35 • Changes "shall be initiated" to "may only be initiated" to more accurately  
36 reflect that initiating a removal process is not a mandate, but rather that





# MUNICIPALITY OF ANCHORAGE

## ASSEMBLY MEMORANDUM

No. AM 327-2022

Meeting Date: June 1, 2022

1 **FROM: Assembly Counsel**

2  
3 **SUBJECT: RESPONSE TO LEGAL QUESTIONS RE: AO 2022-60(S), AN**  
4 **ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING**  
5 **ANCHORAGE MUNICIPAL CODE CHAPTERS 3.10 GENERAL**  
6 **PROVISIONS (RESERVED) AND 27.20 SUPERVISORY BOARDS,**  
7 **AND SECTIONS 2.70.030 AND 29.10.060, TO FULFILL THE**  
8 **REQUIREMENT OF ANCHORAGE MUNICIPAL CHARTER**  
9 **SECTION 7.01(b) THAT THE ASSEMBLY BY ORDINANCE MUST**  
10 **ESTABLISH SPECIFIC PROCEDURES FOR REMOVAL OF**  
11 **ELECTED OFFICIALS FOR BREACH OF THE PUBLIC TRUST.**  
12

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13  
14 At the May 20, 2022 work session Assembly Members requested more information  
15 regarding the common law jurisprudence on removal of an elected official, and to  
16 provide the code or statute for the offenses listed as actions that constitute a  
17 breach of the public trust.

18  
19 **Common law jurisprudence on removal of an elected official.** Assembly  
20 Counsel indicated at the work session that the attorney conducting a legal  
21 sufficiency review of the accusation (the first step after a vote to initiate  
22 proceedings), and any hearing officer presiding over the removal hearing, would  
23 recognize that as a matter of law it requires a high standard of proof of egregious  
24 conduct or serious pattern of conduct in order to find cause for removal. One of  
25 the initial steps in the legal sufficiency review by the municipal attorney or third-  
26 party attorney (subsection D. of each removal Code section) and for the hearing  
27 officer if the accusation proceeds further is to determine what the applicable legal  
28 standard is, and apply it to the facts alleged in the accusation, or as presented at  
29 the hearing as the case may be.

30  
31 *McQuillin: The Law of Municipal Corporations* is one of the leading legal treatises  
32 on municipal law in the nation and provides the common law premise for Counsel's  
33 statements at the work session. Although the law may vary among states and  
34 municipal jurisdictions, where removal of elected officials for cause is provided for,  
35 "there must be strong proof of willful and knowing wrongdoing."<sup>1</sup> The removal

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<sup>1</sup> 4 McQuillin Mun. Corp. § 12:322, *Cause-Elective officers*, (3d ed., Sept. 2021)

1 proceedings are deemed to be penal in nature, similar to criminal prosecutions,  
2 and are “to be strictly construed as in derogation of the common law.”<sup>2</sup> Mere failure  
3 to perform just one duty required by law is not sufficient cause; there must be a  
4 general failure to perform the official duties alleged, or a general abandonment of  
5 office.<sup>3</sup> A property or liberty interest in the position can be shown, so due process  
6 requires a hearing to determine whether there is cause.

7  
8 If grounds are specified in the charter or law for removal, some states have held  
9 that no other grounds may be invoked, but is also usually left to the agency vested  
10 with removal power to determine what is sufficient cause.<sup>4</sup> While this is not clearly  
11 settled in Alaska or Anchorage, Counsel’s sense is a court would not find itself  
12 limited to the listed grounds in the proposed ordinance if the alleged conduct  
13 satisfies the common law description of the types of conduct that provide sufficient  
14 cause for removal of an elected official. And, other law provisions exist where no  
15 list of grounds is provided so a hearing officer or court would need to determine if  
16 the alleged conduct satisfies the provided definition of “breach of the public trust.”  
17 For example, AMC section 4.05.065 applies for removal “for breach of the public  
18 trust” of a municipal board or commission member and does not have a list of  
19 specific actions, but describes that such actions “may include factors that  
20 materially and adversely affect the performance of the board or commission  
21 member or adversely affect the reputation or performance of the board or  
22 commission or the municipality.”<sup>5</sup> This language or precedents before the Ethics  
23 Board may be useful reference for the initial sufficiency review and by the hearing  
24 officer in a proceeding under the provisions of this proposed ordinance. While the  
25 S-version includes the prefatory phrase “but are not limited to” so the list of actions  
26 is open-ended, removal of that phrase may not necessarily mean actionable  
27 grounds are limited to the list. That could become a legal argument to make in  
28 proceedings if the phrase is omitted: whether the list is definitive and closed, or  
29 merely illustrative.

30  
31 “Sufficient cause” in the removal context means “legal cause as distinguished from  
32 discretion, and is a cause which specifically relates to and affects the proper  
33 administration of the office involved.”<sup>6</sup> The cause must not be

---

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> 4 McQuillin Muni. Corp. § 12:330, *Sufficiency of cause*, (3d ed., Sept. 2021).

<sup>5</sup> AMC subsection 4.05.065A.1. states:

A. A member of a board or commission may be removed from service for breach of the public trust following the procedures set forth in this section:

1. For purposes of this section, actions constituting a breach of the public trust may include factors that materially and adversely affect the performance of the board or commission member or adversely affect the reputation or performance of the board or commission or the municipality.

1  
2 ...mere whim or subterfuge, or indefinite as to time, place or nature,  
3 or remote or indirect, but must be of substance, relating to the  
4 character, neglect of duty, or fitness of the person removed. It must  
5 be reasonable. If the cause assigned is a reasonable one, then the  
6 question whether there is sufficient basis to suspend or remove is for  
7 the administrative agency; whether the assigned cause, of itself,  
8 constitutes a proper ground for removal or suspension is for the court  
9 to determine.

10  
11 It is obvious that mere political bias or personal dislike of the officer  
12 having the power of removal is not a cause. It has been declared,  
13 however, that a municipal executive officer or executive board upon  
14 whom alone the removal power has been conferred is not prevented  
15 by reason of bias or prejudice from removing anyone whose conduct  
16 has merited his severance from public service.

17  
18 Elected municipal officers may be removed from office only upon a  
19 showing of perverseness amounting to criminality or culpable  
20 indifference to official duties. In addition, particular acts of usurpation  
21 of power on the part of the mayor, which have no legal effect on the  
22 affairs of the city, are ordinarily not sufficient grounds for removal.

23  
24 To warrant removal of a public officer for a town or village for  
25 unscrupulous conduct, gross dereliction of duty, or conduct that  
26 connotes a pattern of misconduct and abuse of authority, an official's  
27 misconduct must amount to more than minor violations and must  
28 consist of self-dealing, corrupt activities, conflict of interest, moral  
29 turpitude, intentional wrongdoing, or violation of a public trust.<sup>7</sup>

30  
31 In 1975 when crafting Charter § 7.01, the Anchorage Charter Commission  
32 discussed the importance of the removal process having a "for cause" or  
33 reasonable cause element, and appeared to settle on "breach of the public trust"  
34 language to prevent arbitrary reasons for removal and to require sufficient cause.<sup>8</sup>  
35 Municipal Attorney Richard Garnett opined that an attempted arbitrary removal  
36 would be a violation of basic due process.<sup>9</sup> The inclusion of the mental state  
37 language "[w]illful and knowing breach of duty or culpable indifference to official

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6 *Id.*

7 *Id.* (internal footnotes and citations omitted).

8 Anchorage Charter Commission Meeting, July 18, 1975, transcript pp. 27-35. (pp. 5280-5288 of 6285 compiled transcripts of Charter Commission meetings), *attached hereto*.

9 Anchorage Charter Comm'n, July 18, 1975 at 30 (p. 5283 of 6285), *attached hereto*.

1 duties” in the 1993 ordinance for the assembly and school board member removal  
2 tracks this due process concern of using minor violations, by requiring proof of  
3 such mental state by a preponderance of the evidence. The proposed ordinance  
4 carries the same standard forward to the new sections for the mayor and service  
5 area board members.

6  
7 **Inclusion of the mayor in “elected official” removal.** The Charter Commission  
8 also discussed how the vacancies provisions would be organized, determining a  
9 single Charter section could cover it for “the mayor, the school board, and the  
10 assembly”<sup>10</sup> and clearly deciding towards the conclusion of the Commission’s work  
11 that the removal of the mayor would be included in the term “elected official.”<sup>11</sup>  
12 Overall, while other jurisdictions may not have provided the legislative branch or  
13 municipal government the ability to remove a mayor for cause, the Charter  
14 Commission included that authority and the voters eventually approved.

15  
16 **Definitions of the listed actions constituting grounds for removal.** Another  
17 request at the May 20 work session is for the statute or Code definitions of the  
18 offenses listed as actions constituting grounds for removal. The list of actions was  
19 first created by Assembly Member John Wood’s submission of AO 93-54(S), and  
20 his attached statements in AM 426-93 merely stated:  
21

AO 93-54(S), like AO 93-54, would implement Charter Section  
7.01 and establish a clear procedure for the removal of an  
assemblymember or school board member from office for breach of  
the public trust. AO 93-54(S) differs in that it defines what  
actions will constitute a breach of the public trust.

22  
23  
24 The Administration at the time submitted AM 427-93 which concurred with AO 93-  
25 54(S) and stated in relevant part: “AO 92-54(S) [stet] is the preferred version due  
26 to the fact that it lists specific items which will constitute a breach of the public  
27 trust.”

28  
29 The implication is the 1993 Assembly was uncertain about merely resting on the  
30 language “breach of the public trust” and desired a list of actions to define it.  
31 Without legislative history to more specifically refer to statute or ordinances  
32 existing at that time that define each of the listed actions, Counsel can only  
33 speculate based on current statutes and research but cannot guarantee the below  
34 are the precise definitions of the actions the 1993 body intended. The use of “public

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<sup>10</sup> Anchorage Charter Comm’n, May 8, 1975 at 40 (p. 3073 of 6285), *attached hereto*.

<sup>11</sup> Anchorage Charter Comm’n, June 26, 1975 at 51-53 (pp. 4494-4496 of 6285), *attached hereto*,  
(discussing Committee Report No. 9’s recommendation to combine vacancy and removal provisions of the  
mayor, school board, and assembly and put in one place, with removal of an “elected official” for breach of  
the public trust and the safeguards required for how to proceed placed in subsection (b)).

1 trust” in other provisions of the Code,<sup>12</sup> in state law, and in other jurisdictions may  
2 provide persuasive argument for how to interpret and apply the standard and the  
3 listed grounds in a specific case.  
4

5 That said, provided below from the list in new section 3.10.050A. is each action  
6 with Counsel’s remarks or reference to the law it most closely incorporates:  
7

8 1. Acceptance of cash gifts from one doing business with the municipality;

9 - This is action is most similar to the elements of Receiving unlawful gratuities, AS  
10 11.56.120,<sup>13</sup> a class A misdemeanor, or Receiving a bribe, AS 11.56.110,<sup>14</sup> a class  
11 B felony. Anchorage’s Ethic’s Code prohibits accepting a gift valued over \$50, and  
12 includes supplemental rules for elected officials giving consideration to campaign  
13 contributions that are properly reported and sponsor-provided cost coverage for  
14 events related to government business. AMC subsection 1.15.050F. reserves  
15 review by the Ethics Board or municipal ethics officer to “approve a gift which is  
16 consistent with the public policy concerns underlying limitations on gifts to public  
17 servants (influence, appearance of influence, conflict of interest, **public trust.**)”  
18 (emphasis added).  
19

20 2. Violation of chapter 1.15; - this incorporates by reference the Ethics Code,  
21 AMC chapter 1.15. It is too lengthy for reprinting here.  
22

23 3. Perjury; - this is defined at AS 11.56.200<sup>15</sup> and is a class B felony.  
24

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<sup>12</sup> See AMC section 4.05.065A., *supra* n. 5.

<sup>13</sup> AS § 11.56.120. Receiving unlawful gratuities.

(a) A public servant commits the crime of receiving unlawful gratuities if, for having engaged in an official act which was required or authorized and for which the public servant was not entitled to any special or additional compensation, the public servant

- (1) solicits a benefit, regardless of value; or
- (2) accepts or agrees to accept a benefit having a value of \$50 or more.

<sup>14</sup> AS § 11.56.110. Receiving a bribe.

(a) A public servant commits the crime of receiving a bribe if the public servant

- (1) solicits a benefit with the intent that the public servant's vote, opinion, judgment, action, decision, or exercise of discretion as a public servant will be influenced; or
- (2) accepts or agrees to accept a benefit upon an agreement or understanding that the public servant's vote, opinion, judgment, action, decision, or exercise of discretion as a public servant will be influenced.

<sup>15</sup> AS § 11.56.200. Perjury.

(a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.

(b) In a prosecution under this section, it is not a defense that

- (1) the statement was inadmissible under the rules of evidence; or
- (2) the oath or affirmation was taken or administered in an irregular manner.

1 4. Falsification of records: - there are several state criminal offenses related  
2 to falsifying records, which may be applicable depending on the facts and context.  
3 AS 11.56.820, Tampering with public records in the second degree,<sup>16</sup> is a class A  
4 misdemeanor and a good example. Also possibly within this category is AS  
5 11.56.815, Tampering with public records in the first degree (with a specific intent  
6 mental state elements and for certain contexts); AS 11.56.505 Forgery, AS  
7 11.56.550 Offering a false instrument for recording, AS 11.56.630 Falsifying  
8 business records.

9  
10 5. Filing false reports: - may be referring to AS 11.56.800, False information  
11 or report,<sup>17</sup> a class A misdemeanor, or the nearly identical municipal offense in  
12 AMC section 8.30.020, False information or report,<sup>18</sup> also a class A misdemeanor.

---

<sup>16</sup> AS § 11.56.820. Tampering with public records in the second degree.

(a) A person commits the crime of tampering with public records in the second degree if the person  
(1) knowingly makes a false entry in or **falsely** alters a public **record**;  
(2) knowingly destroys, mutilates, suppresses, conceals, removes, or otherwise impairs the verity,  
legibility, or availability of a public record, knowing that the person lacks the authority to do so; or  
(3) certifies a public record setting out a claim against a government agency, or the property of a  
government agency, with reckless disregard of whether the claim is lawful, or that payment of the claim is  
not authorized in the budget of the government agency.

(b) In this section,

- (1) “certifies” means attesting to the existence, truth, or accuracy of facts, or that one holds an opinion,  
stated in a public record; the term includes the responsibilities for state officials set out in [AS 37.10.030](#);
- (2) “falsely alters” has the meaning ascribed to it in [AS 11.46.580](#); and
- (3) “makes a false entry” means to change or create a public record, whether complete or incomplete, by  
means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or by any other  
means, so that the record so changed or created states or implies a fact that the maker knows is not true, or  
states or implies an opinion that the maker does not hold.

(c) Tampering with public records in the second degree is a class A misdemeanor.

<sup>17</sup> AS § 11.56.800. False information or report.

(a) A person commits the crime of false information or report if the person knowingly

- (1) gives false information to a peace officer
  - (A) with the intent of implicating another in an offense; or
  - (B) concerning the person's identity while the person is
    - (i) under arrest, detention, or investigation for a crime; or
    - (ii) being served with an arrest warrant or being issued a citation;
- (2) makes a false report to a peace officer that a crime has occurred or is about to occur;
- (3) makes a false report or gives a false alarm, under circumstances not amounting to terroristic threatening  
in the second degree under AS 11.56.810, that a fire or other incident dangerous to life or property calling  
for an emergency response has occurred or is about to occur;
- (4) makes a false report to the Department of Natural Resources under AS 46.17 concerning the condition  
of a dam or reservoir; or
- (5) gives false information to a public employee relating to a person's eligibility for a permanent fund  
dividend under AS 43.23 and the false information does not also violate AS 11.56.205.

<sup>18</sup> **AMC 8.30.020 - False information or report.**

A. person commits the crime of false information or report if the person knowingly:

1. Gives false information to a peace officer:
  - a. With the intent of implicating another person in an offense; or

1  
2 **6. Nepotism:** - this is making a hiring decision based on kinship with the hired  
3 employee. It is codified in AMC section 3.30.168, *Employment of relatives*, which  
4 allows an employee's relative to be hired and their performance reviewed, but with  
5 prohibitions and safeguards in place.<sup>19</sup> The comparable state statute AS

b. Concerning the person's identity while the person:

- i. Is under arrest, detention or investigation for a crime; or
- ii. Has an outstanding arrest warrant or is being issued a citation;

2. Makes a false report to a peace officer that a crime has occurred or is about to occur; or

3. Makes a false report or gives a false alarm that a fire or other incident dangerous to life or property calling for an emergency response has occurred or is about to occur.

<sup>19</sup> **AMC 3.30.168 - Employment of relatives**, states in pertinent part:

...

**B. Policy.** Except as otherwise provided in this section, an applicant who is otherwise qualified may not be denied appointment to a municipal position or continued employment with the municipality because the applicant's primary or secondary relative is employed by the municipality.

**C. Management.**

1. *Employment decisions.*

a. A related employee may not participate in a decision involving a primary or secondary relative.

b. A related employee may not participate in a decision if a related employee is a decision maker.

c. The director shall participate in a decision involving a primary relative of the agency head. The final decision requires approval of the director.

d. The director's approval shall be required in a final employment decision involving a secondary relative of the agency head.

2. *Performance decisions.*

a. For purposes of this subsection, participation shall include (i) when the primary or secondary relative is the subject of the performance decision, or (ii) when the primary or secondary relative is a witness in a performance decision.

b. A related employee may not participate in a decision involving a primary or secondary relative.

c. A related employee may not participate in a decision if a related employee is a decision maker.

d. The director shall participate in a final performance decision involving a primary relative of the agency head. The final decision shall require the approval of the director.

e. The director's approval shall be required in a performance decision involving a secondary relative of the agency head.

f. In a performance decision involving a law enforcement investigation, the senior employee shall not participate in the investigative process, including:

(1) The decision to initiate an investigation;

(2) Management oversight of the investigation;

(3) Determination of findings;

(4) Participation in disciplinary hearings including Loudermill or other proceedings under AMC 3.30; and

(5) The final decision shall be made by the agency head, or if the agency head is the related relative, by another employee higher than the agency head in the chain of command established by Chapters 3.20 and 3.30.

3. *Supervision.*

a. There may not be less than two intermediate supervisors between a senior employee and a subordinate employee, whether primary or secondary relatives.

b. Current relative employee relationships that would be prohibited under subsection 3.a are grandfathered; however, related employees must meet the requirements of subsection 3.a. for a new assignment, appointment, or position.

4. *Temporary appointment, assignment, or continued employment.*

1 39.90.020 prohibits nepotism but is made specifically applicable to state  
2 employment. It may be a persuasive legal resource.

3  
4 7. Making personal use of municipal or school district property; - this is an  
5 offense in the Ethics Code, at AMC section 1.15.040, *Use of municipal*  
6 *resources.*<sup>20</sup>

7  
8 8. Destruction of municipal or school district property; - this is self-explanatory,  
9 and is comparable to the crimes of criminal mischief which has five degrees of  
10 severity to the offense. AMC section 8.20.010, *Criminal mischief,*<sup>21</sup> is

---

a. The director may authorize in writing a temporary appointment or assignment to or continued employment in a position directly supervised by a relative, if the director finds the appointment, assignment, or continued employment is of short duration and no reasonable alternative is available.  
5. *Management of conflicts....*

<sup>20</sup> **AMC 1.15.040 - Use of municipal resources.**

A. Municipal resources include, but are not limited to funds, facilities, tools, equipment, vehicles, property, consumable resources, and employees and employee time. Municipal resources shall be used for municipal public purposes, which shall be defined to include:

1. The performance of municipal duties, including educational and outreach programs;
2. Occasional and limited use of municipal resources for community service or charitable fundraising purposes if duly authorized by the chair of the assembly, the mayor, or the mayor's designee;
3. Use of municipal resources as further addressed in the mayoral directives (policies and procedures), as well as an annual umbrella charitable fundraising program designated by the mayor for participation by public servants.

B. De minimus personal use of municipal resources is permitted and is defined as use that is infrequent or occasional and that results in little or no actual cost to the municipality. No personal use, however, may be for political activities, lobbying, or outside business interests.

C. Except to the extent the general public has the same access to or as otherwise authorized, a municipal employee shall not use facilities, equipment, data, or supplies of the municipality to support an employee's personal endeavors, including contemporaneous service or employment.

<sup>21</sup> **8.20.010 - Criminal mischief.**

A. It is unlawful for any person, having no right to do so or any reasonable ground to believe the person has such a right, to:

1. Damage property of another in an amount of \$50.00 or more; or
2. Tamper with a fire protection device in a building that is in a public place; or
3. Knowingly access a computer, computer system, computer program, computer network, or part of a computer system or network; or
4. Uses a device to descramble an electronic signal that has been scrambled to prevent unauthorized receipt or viewing of the signal unless the device is used only to descramble signals received directly from a satellite or unless the person owned the device before September 18, 1984; or
5. Knowingly remove, relocate, deface, alter, obscure, shoot at, destroy, or otherwise tamper with an official traffic control device or damage the work upon a highway under construction; or
6. With reckless disregard for the risk of harm to or loss of the property or with intent to cause substantial inconvenience to another, tamper with the property of another; or
7. Damage property of another in an amount of less than \$50.00; or
8. Ride in a propelled vehicle with criminal negligence that it has been stolen or that it is being used in violation of AS 11.46.360 or AS 11.46.365(a)(1).

B. Violation of subsections A.1. through A.5. above is a class A misdemeanor.

C. Violation of subsections A.6. through A.8. above is a class B misdemeanor.

1 representative of the elements of such an offense. In our Code it is a class A or B  
2 misdemeanor depending on the mental state of the offender and degree and type  
3 of damage or destruction.

4  
5 9. Official oppression; - This is a common law offense that, according to a  
6 American Law Reports treatise section, encompasses extortion as well as a public  
7 official under color of authority of his office and with improper motive inflicting  
8 physical harm on a person.<sup>22</sup>

9  
10 10. Actual or attempted official misconduct, as defined by state law; - this was  
11 provided in AM 278-2022 submitted with the original proposed ordinance.

12  
13 11. Ordering, or knowingly allowing a person appointed by the mayor to order,  
14 a municipal employee to undertake an unlawful act; - this means what it says and  
15 will depend on what unlawful act is at issue in the accusation document that  
16 initiates the proceedings. There would need to be a finding of the mayor's mental  
17 state and action, or knowledge of a subordinate's action and allowing it.

18  
19 12. Substantial breach of a statutory-, Code- or Charter-imposed duty; - Similar  
20 to #11, this is plain language that will depend on the duty alleged to have been  
21 breached as detailed in the accusation document. As noted in the *McQuillin*  
22 treatise, a single breach of a simple duty is not sufficient, thus this requires the  
23 breach to be "substantial." Black's Law Dictionary (11<sup>th</sup> Ed. 2019) has a multitude  
24 of definitions, most relevant in this context are: "... **2.** Real and not imaginary;  
25 having actual, not fictitious, existence. **3.** Important, essential, and material; of real  
26 worth and importance. ... **6.** Considerable in extent, amount, or value; large in  
27 volume or number. **7.** Having permanence or near-permanence; long-lasting ..."

28  
29 13. Failure to faithfully execute the directives of a duly enacted ordinance. –  
30 This refers to the mayor's overall duty as the head of the executive branch,  
31 incorporating the separation of powers doctrine and its description of the duty and  
32 responsibility of the executive power. It relates to the oath of office taken by the

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<sup>22</sup> 83 A.L.R.2d 1007, *What constitutes offense of official oppression*, (Originally published in 1962), states in relevant part:

The common-law crime, in general, consists in the inflicting upon any person, from an improper motive, of any illegal bodily harm, imprisonment, or any injury other than extortion, by a public officer while exercising, or under color of exercising, his office. 10 Halsbury's L of Engl 3d ed p 615. The crime has also been defined as the abuse of any discretionary power invested by law in a public officer committed in the exercise of, or under color of exercising, the duties of his office with an improper motive. 2 Wharton, Criminal Law 12th ed § 1898.

It should be noted that the common-law crime of extortion, that is, the taking of money or other valuable thing when it is not due, by a public officer acting under color of his office and with an improper motive<sup>1</sup> is embraced by the wording of many of the statutory definitions of official oppression;<sup>2</sup> therefore, the taking of money or property illegally by a public officer acting under color of his office has in some instances been held to be official oppression.

1 mayor, to “faithfully perform the duties of [mayor] to the best of my ability.”<sup>23</sup> The  
2 U.S. and Alaska Constitutions both contain a “faithful execution” clause for the  
3 President and Governor, respectively.<sup>24</sup> One legal scholar engaged in a historical  
4 analysis prefacing and leading to the framers crafting that clause in Article II of the  
5 federal constitution and concluded there are three core meanings behind it: to  
6 prevent ultra vires acts and keep presidential action within his authorization, to  
7 proscribe self-dealing and demand the president “act for reasons associated  
8 primarily with the public interest rather than [] self-interest,” and an affirmative  
9 command to act diligence, care and good faith to pursue what is in the best interest  
10 of the constituency.<sup>25</sup> Some of the historical examples reviewed involved  
11 impeachments and “reflect a public trust theory of impeachment, in which acting  
12 contrary to oath, duty, and office are key elements.”<sup>26</sup> As used in this section of  
13 the proposed ordinance, the clause is specific to executing directives in an  
14 ordinance passed by the Assembly. Again, turning to common law jurisprudence  
15 for removal, if the allegations against the mayor are failure to carry out political or  
16 discretionary actions directed by ordinance, such a complaint is unlikely to pass  
17 the initial legal sufficiency review, or the hearing officer’s determinations as a  
18 matter of law.<sup>27</sup> And, the mental state elements apply, so a mayor’s good faith  
19 refusal to take an action directed in an ordinance because there are, in fact,  
20 reasonable grounds for such refusal means the allegation is unlikely to pass  
21 muster in a removal proceeding. This phrase, however, supports the validity of a  
22 removal proceeding if the allegations and facts demonstrate the mayor’s willful and  
23 knowing refusal to carry out a directive-that is not directing a political or  
24 discretionary action- in an ordinance, or culpable indifference to that directive.  
25 Would a single instance suffice? The common law in this area discussed in the  
26 first part of this memorandum suggests the answer is “no,” and a pattern or  
27 repeated instances of failure to execute an ordinance’s directives within the  
28 legislative power to so direct, shown by a preponderance of the evidence, may be  
29 necessary for a successful removal action.

30  
31 The main point to bear in mind is that “breach of the public trust” is to be interpreted  
32 in light of the common law and precedents whether in Alaska or other jurisdictions  
33 related to the removal of a public elected official. With the requirement to prove a  
34 mental state element, it is a high bar and cannot be arbitrarily based on minor  
35 violations, isolated missteps, discretionary actions, or political differences. But it is  
36 not a bar set as high as a criminal proceeding, the standard of proof in the current  
37 Code and the new sections proposed by the ordinance is a “preponderance of the

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<sup>23</sup> Anchorage Municipal Charter Art. XVII, § 17.07.

<sup>24</sup> U.S. Const. Art. II, § 3; and Alaska Const. Art. III, § 16.

<sup>25</sup> Andrew Kent et. al., *Faithful Execution and Article II*, 132 Harv. L. Rev. 2111, 2178–79 (2019).

<sup>26</sup> *Id.* at 2171.

<sup>27</sup> For example, the power of appointment of department heads is vested in the mayor and a clear executive function. If the Assembly passed an ordinance directing the mayor to appoint John Smith to head a certain department, and the Mayor does not and appoints someone else, that would not provide sufficient grounds for removal under subsection 13.

1 evidence,” and not the “proof beyond a reasonable doubt” standard in criminal law.  
2 The foregoing explanation of the actions listed are not intended to be  
3 comprehensive or absolute, they are demonstrative of the complexity of the  
4 process for removal and an effort to iterate some statutory and common law  
5 offenses that are encompassed by the phrase “breach of the public trust.”  
6

7 **No state law preemption.** Another legal point that has been asked is whether  
8 enacting this removal process is preempted by state statute. Section 3 of the  
9 proposed ordinance for a process for mayoral removal is clearly different than AS  
10 29.20.280(a), the comparable state statute:

11  
12 **AS § 29.20.280. Vacancy in the office of mayor.**

13 (a) The governing body shall, by two-thirds concurring vote, declare the  
14 office of mayor vacant only when the person elected

15 (1) fails to qualify or take office within 30 days after election or  
16 appointment;

17 (2) unless excused by the governing body, is physically absent for 90  
18 consecutive days;

19 (3) resigns and the resignation is accepted;

20 (4) is physically or mentally unable to perform the duties of office;

21 (5) is convicted of a felony or of an offense involving a violation of the  
22 oath of office;

23 (6) is convicted of a felony or misdemeanor described in AS 15.56;

24 (7) is convicted of a violation of AS 15.13;

25 (8) no longer physically resides in the municipality; or

26 (9) if a member of the governing body in a second class city, misses  
27 three consecutive regular meetings and is not excused.

28 ...

29 This provision of Title 29, Municipal Government, is not a prohibition on a home  
30 rule municipality from enacting an ordinance that approaches declaring a vacancy  
31 in the mayor’s office, including by removal, differently. AS 29.10.200 identifies the  
32 specific sections of Title 29 that “apply to home rule municipalities as prohibitions  
33 on acting otherwise than as provided.” AS 29.20.280 is not in the listed sections.<sup>28</sup>  
34 Therefore, as a home rule municipality the MOA is not preempted from enacting  
35 the proposed ordinance.  
36

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<sup>28</sup> AS 29.10.200 lists sections of Title 29 in numerical order, and AS 29.20.280, if it were included, would be between subsections (15) and (16):

(13) AS 29.20.150 (term of office);

(14) AS 29.20.220 (executive power);

(15) AS 29.20.270(e) (ordinance veto by mayor);

(16) AS 29.20.630 (prohibited discrimination);

1 Assembly Members may contact me with any further legal questions or concerns.

2  
3 Respectfully submitted: Dean T. Gates, Assembly Counsel

4  
5 Attachments: Excerpts from Anchorage Charter Commission meeting  
6 transcripts:

- 7 • May 8, 1975, pages 38-42.
- 8 • June 26, 1975, pages 51-53.
- 9 • July 18, 1975, pages 27-35.

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ANCHORAGE CHARTER COMMISSION MEETING

ALASKA METHODIST UNIVERSITY

DATE: May 8, 1975  
(Evening meeting)

Members present:

Fred Chiei, Vice Chairman  
Jane Angvik  
Dick Fischer  
Mary Frohne  
Shari Holmes  
Lisa Parker  
Jim Parsons  
Arliss Sturgulewski  
Rick Garnett, Attorney  
Evy Walters, Executive Secretary

Members Absent:

Frank Reed, Chairman  
William Sheffield  
Joe Josephson

Others Present:

Margaret Schmidt  
Jan Hansen  
Randy Johnson  
Millett Keller

Hearing opened at 7:30 p.m.

1 MR. GARNETT: Yeah.

2 MS. STURGULEWSKI: Question.

3 MR. CHIEI: The question has been called.

4 (Simultaneous speech)

5 MR. CHIEI: Is there anyone opposed to the motion?  
6 Motion's carried.

7 MS. HOLMES: Mr. Chairman, the insertion of -- in line  
8 six beginning with vacancies, that sentence is something  
9 that we had inadvertently omitted from the school section.  
10 I would move inclusion of that sentence.

11 MS. STURGULEWSKI: Second.

12 MR. CHIEI: State the motion again, Shari.

13 MS. HOLMES: The sentence that you see in your  
14 (indiscernible) vacancies in the school board shall be  
15 filled in the manner provided for vacancies under the  
16 assembly was inadvertently omitted from the school section  
17 and we'd have to (indiscernible). I would therefore move  
18 for its inclusion.

19 MR. CHIEI: All right, it's been seconded by Arliss.  
20 Is there any discussion by the Commission on it?

21 MS. STURGULEWSKI: Question.

22 MR. FISCHER: Yeah, Mr. Chairman?

23 (Simultaneous speech)

24 MR. FISCHER: I can't remember how vacancies are  
25 provided by (indiscernible).

1 (Simultaneous speech)

2 MR. FISCHER: Page four?

3 MR. GARNETT: Yes, at 3.05.

4 (Simultaneous speech)

5 MR. FISCHER: What do we do, Mr. Chairman, with the  
6 last sentence of that?

7 MR. CHIEI: The last sentence of which?

8 MR. FISCHER: Well, the -- if we're doing it the same  
9 way as we're doing it by the assembly, it says that the  
10 assembly member shall be reduced to fewer than six members  
11 and the remaining members should be filled by vacancies  
12 (indiscernible). And then (indiscernible) seven days.

13 MS. FROHNE: Mr. Chairman?

14 MR. CHIEI: Mary?

15 MS. FROHNE: In as much as it is a different number, I  
16 guess we shouldn't reuse the reference, but have Rick fill  
17 in a similar wording with a majority of five being the  
18 number.

19 MR. PARSONS: I would so move, Mr. Chairman. What  
20 we're doing (indiscernible).

21 MR. FISCHER: Mr. Chairman?

22 MS. FROHNE: I'll second it.

23 MR. CHIEI: Now wait a minute, wait a minute. It's  
24 been moved (indiscernible).

25 (Simultaneous speech)

1           MR. GARNETT: No, there was an order, there was a  
2 motion before us.

3           (Simultaneous speech)

4           MS. FROHNE: May we substitute motion rather than  
5 original motion with this?

6           MR. FISCHER: Mr. Chairman, I would move that a  
7 substitute motion to the one before us for Mr. Garnett to  
8 draw up an article to -- the wording to include here similar  
9 to the assembly (indiscernible) number being five.

10          MR. CHIEI: Does that have the second by Mary?

11          MS. FROHNE: Yes.

12          MR. CHIEI: Mary, did you second that?

13          MS. FROHNE: I did.

14          MR. CHIEI: Discussion, Lisa?

15          MS. PARKER: (Indiscernible) vacancy and.....

16          (End of side A)

17          MS. STURGULEWSKI: Mr. Chairman, we had on this  
18 particular one, discussed, I thought earlier, and that's  
19 probably why it is not in the school session, that we wanted  
20 a section drawn up that would cover this matter for the -- I  
21 thought the Mayor, the school board and the assembly.

22          MR. GARNETT: We did it for the Mayor, we didn't do it  
23 for the school board.

24          MS. STURGULEWSKI: We did it for the Mayor and we did  
25 it for the assembly in their sections, did we not?

1 MR. GARNETT: Right, yes.

2 MS. STURGULEWSKI: Well, then I think this is what  
3 we're saying and is an appropriate method to follow is we'll  
4 have to be self standing here then. Can we do that, require  
5 by ordinance by the assembly?

6 MR. GARNETT: I suppose so. I don't -- another way  
7 you can say -- or preempt just on the matter of determining  
8 vacancies on (indiscernible).

9 MR. FISCHER: Well, the '71 charter indicated  
10 vacancies of the office of school board members shall be  
11 determined as provided by ordinance.

12 MS. HOLMES: So we can reconcile, Mr. Chairman, we can  
13 reconcile the school language to follow the assembly  
14 language except with the (indiscernible).

15 MR. GARNETT: (Indiscernible) yeah.

16 MS. HOLMES: And including the (indiscernible).

17 MS. STURGULEWSKI: Uh-huh.

18 MR. GARNETT: Evy, why don't you do that in full or by  
19 the use of the phrase such as vacancies on the school board  
20 shall be determined and filled and then vacancies on  
21 (indiscernible).

22 MS. HOLMES: I think it would be more proper, from my  
23 point of view, to include the whole thing.

24 MAN 1: Here.

25 MS. FROHNE: We -- we're trying to avoid references

1 where we can.

2 MS. HOLMES: I would withdraw my original motion then  
3 to include a sentence on vacancies.

4 MR. CHIEI: Wait a minute now, I'm.....

5 (Simultaneous speech)

6 MR. CHIEI: There's a substitute motion on the table  
7 (indiscernible) and we're discussing that motion. Any  
8 further discussion on Jim's motion? If not, we'll call for  
9 the question.

10 MR. FISCHER: Question.

11 MS. ANGVIK: In relation to Lisa's point, will we also  
12 then include a section on determining vacancies along with  
13 following your suggestion?

14 MR. FISCHER: I would think so.

15 MS. STURGULEWSKI: I thought that was your intent.

16 MS. FROHNE: I think that's the intent.

17 MS. STURGULEWSKI: It would, it would take care of  
18 that.

19 MS. ANGVIK: Just the whole ball of wax for this to  
20 (indiscernible) to the others.

21 MS. STURGULEWSKI: Right.

22 MS. ANGVIK: All right.

23 (Simultaneous speech)

24 MS. ANGVIK: I just wanted to make sure that's what we  
25 were doing.

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ANCHORAGE CHARTER COMMISSION MEETING

COMMISSION OFFICE

DATE: June 26, 1975

Members present:

Frank Reed, Chairman  
Lisa Parker  
Joe Josephson  
Jane Angvik  
Mary Frohne  
William Sheffield  
Shari Holmes  
Fred Chiei  
Jim Parsons  
Rick Garnett, Attorney  
Pat Parnell, Executive Director

Members absent:

Dick Fischer  
Arliss Sturgulewski

Others present:

John Parks  
Mike Rose  
Mike Rowan  
Carl Whitson  
Judy Whitson  
Walt Parker  
Pat Parker

Hearing opened at 7:30 p.m.

1 MR. CHIEI: Yeah.

2 MR. REED: Motion by Chiei, seconded by Holmes for the  
3 adoption of the Committee Report number 8.

4 MR. CHIEI: I make a move we don't (indiscernible) for  
5 the Borough.

6 MR. REED: If there are no -- all those in favor?

7 ALL: Aye.

8 MR. REED: Those opposed? Hearing no opposition,  
9 Committee Report number 8 (indiscernible - simultaneous  
10 speech).

11 MR. CHIEI: For the (indiscernible - simultaneous  
12 speech).

13 (Simultaneous speech)

14 MR. REED: And the secretary instructed to cast a  
15 unanimous vote.

16 (Simultaneous speech)

17 MR. CHIEI: The city should be investigated also.

18 MS. FROHNE: The city did it first and then the  
19 legislature did it and then (indiscernible).

20 MR. REED: Now (indiscernible - voice lowered).

21 (Simultaneous speech)

22 MR. JOSEPHSON: Okay, on number 9, there are a couple  
23 things. In the original first draft Charter, Mr. Chairman,  
24 vacancies are treated in different articles. There's a  
25 vacancy provision under Article III for the Assembly.

1 There's a vacancy provision under the Mayor, there's a  
2 vacancy provision under the School Board. And they're very  
3 broad, they simply say, for example, in terms of the Office  
4 of the Mayor, that the Assembly, by ordinance, shall adopt  
5 standards and procedures for removal of the Mayor from  
6 office. The philosophy of Committee Report number 9 is to  
7 collect all the vacancy material into one place and to set  
8 out some specific criteria, specific causes where a vacancy  
9 would exist. The only one which is not clear or not  
10 definite is breach of the public trust, case number six.

11 Subsection (b), however, provides safeguards on that  
12 question as to how to proceed to remove an elected official  
13 for the breach of the public trust would be initiated and  
14 provides for notice, statements of charges and public  
15 hearing within impartial person and that the removal would  
16 be accomplished only by extraordinary two-thirds vote.

17 The matter of filling vacancies has changed by making  
18 sure -- and this was Mayor Sullivan's suggestion that the --  
19 that if a person is appointed to fill a vacancy, that he's  
20 qualified, meaning that he has the same Charter  
21 qualifications as he would have had to have if he had stood  
22 for election.

23 I don't know if any member of the Committee wants to  
24 add something to that or Mr. Garnett?

25 MR. GARNETT: (Indiscernible) Mr. Chairman, except

1 that in terms of length, we save four or five areas,  
2 substantial sections (indiscernible) on the words of  
3 (indiscernible).

4 MR. CHIEI: I'll move for its adoption.

5 MR. SHEFFIELD: Second.

6 MR. REED: Moved by Mr. Chiei, seconded by Mr.  
7 Sheffield, adoption of Committee Report number 9.

8 MS. ANGVIK: Mr. Chairman?

9 MR. REED: Ms. Angvik.

10 MS. ANGVIK: I just have to point out to everybody who  
11 wasn't there at that meeting that when section (a) in the  
12 filling of vacancies, we talked about if, in an  
13 extraordinary situation, that the number of members on the  
14 Assembly should be reduced to less than a quorum if they all  
15 get killed in a plane accident, that you fill, by  
16 appointment, up to quorum and then you -- so that you can  
17 conduct business, this section. And then the remaining  
18 vacancies will be filled by that group and then  
19 (indiscernible) but that you immediately fill (indiscernible  
20 - mic noise) within seven days.

21 MR. REED: Any other discussion? Lisa?

22 MS. PARKER: Go ahead.

23 MR. GARNETT: Well, Lisa pointed out, correct me, that  
24 we'll have to change the reference to paragraph (a) of this  
25 section. The reason we're vacant on section numbers and so

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ANCHORAGE CHARTER COMMISSION MEETING

DATE: July 18, 1975

Members present:

- Frank Reed, Chairman
- Jim Parsons
- Mary Frohne
- Joe Josephson
- Fred Chiei
- Arliss Sturgulewski
- Jane Angvik
- Lisa Parker
- Rick Garnett, Attorney
- Pat Parnell, Executive Director
- Patti Zantek, Executive Secretary

Other persons present:

- Ken Spray, Alaska Public Employees Association
- Jim Babb, Anchorage Daily News
- Don Sherwood, Bargaining Team, APEA

1 would certainly be one of the major rights. That -- that  
2 gets into a legislative thing. We're not trusting our other  
3 body if we don't.....

4 MR. REED: Is there any further discussion regarding  
5 the amendment?

6 MS. STURGULEWSKI: Question.

7 MS. FROHNE: This improves it a whole lot.

8 MR. REED: That question's been called. All those in  
9 favor?

10 All: Aye.

11 MR. REED: Those opposed?

12 (No audible response)

13 MR. REED: Hearing no opposition, it's unanimous.

14 MS. STURGULEWSKI: Mr. Chairman, two little nit-  
15 pickings, is 12, is proceedings not.....

16 MR. REED: Yeah.

17 UNIDENTIFIED FEMALE SPEAKER: Should be  
18 (indiscernible).....

19 MS. STURGULEWSKI: Okay, and down in line 22, a comma  
20 after School Board.

21 MS. FROHNE: Mr. Chairman.

22 MR. REED: Mary.

23 MS. FROHNE: I would like to add on line 19, "or  
24 School Board, as the case may be, on the basis of facts  
25 found." In other words, they would have to -- the facts

1 were proved in a judicial review, the Assembly's action or  
2 the School Board's action would have to be on the basis of  
3 the facts found, and not on an arbitrary basis.

4 MS. STURGULEWSKI: Well, Mr. Chairman.

5 MR. REED: Arliss.

6 MS. STURGULEWSKI: Mary, what have we said up above?  
7 I don't understand. Don't you read that in context?

8 MS. FROHNE: Well,.....

9 MR. REED: Well, this is (indiscernible).....

10 MS. FROHNE: I don't believe that is more than a  
11 (indiscernible) unless we do add a phrase.

12 MS. STURGULEWSKI: I don't.

13 UNIDENTIFIED MALE SPEAKER: (Indiscernible).

14 MS. FROHNE: It says, "removal must -- must be  
15 approved by 2/3 of the authorized membership, as the case  
16 may be....."

17 MS. STURGULEWSKI: But it states what removal is.

18 MR. REED: Well, Mary -- Mary, doesn't this actually  
19 state -- state that the -- the conditions of removal in  
20 effect for a breach of public (indiscernible).....

21 UNIDENTIFIED MALE SPEAKER: Yes.

22 MS. FROHNE: It says the procedures to go through.

23 UNIDENTIFIED MALE SPEAKER: They're all through here  
24 and (indiscernible).....

25 MS. FROHNE: It says, "procedures to go through,"

1 which supposedly are determining the facts, but.....

2 (Simultaneous speech)

3 MS. FROHNE: I want to be darn sure that this last  
4 sentence means that their action has to be on the basis of  
5 the facts found in the judicial review, you know, in the  
6 whole proceeding above.

7 (Simultaneous speech)

8 MS. STURGULEWSKI: To me, I don't have any, you  
9 know,.....

10 UNIDENTIFIED MALE SPEAKER: I think it's very  
11 (indiscernible).....

12 (Simultaneous speech)

13 MR. REED: I don't have any qualms about the Assembly  
14 having.....

15 MS. FROHNE: Doing those things, that's why it  
16 (indiscernible).....

17 MR. REED: .....having that much sense, that they're  
18 going to be based on the fact found anyway, and if they  
19 aren't, they've probably got adequate underlying reasons. I  
20 mean, if (indiscernible).....

21 MS. ANGVIK: Whether they're adequate or not, they  
22 wouldn't (indiscernible).....

23 MR. JOSEPHSON: Mr. Chairman, Rick, when you wrote  
24 down this casual phrase, as the case may be, what did you  
25 have in mind?

1 MR. GARNETT: Well, I had in mind designating the  
2 Assembly or the School Board,.....

3 MR. REED: The Assembly or the School Board.....

4 MR. GARNETT: .....depending on whether it was an  
5 assemblyman or a School Board member who was being removed.

6 (Simultaneous speech)

7 MR. REED: That only refers to whether it's an  
8 assemblyman or a School Board member.

9 MR. GARNETT: Now, on the case issue (indiscernible).

10 MS. FROHNE: In other words, each legislative body  
11 would be the (indiscernible).....

12 MR. GARNETT: Yeah.

13 MR. REED: Yeah, right.

14 MS. FROHNE: .....its membership.

15 MR. REED: That's right.

16 MR. GARNETT: You know, I don't know, Joe, it seems to  
17 me that the concept of removing a person from office would  
18 include, by its nature, the idea of cause or reasonable  
19 cause and.....

20 (Simultaneous speech)

21 MR. GARNETT: And if it were arbitrary, if an  
22 arbitrary removal were attempted, I think it would be a  
23 violation of basic due process and (indiscernible).

24 MS. FROHNE: If you're sure that would apply, I will  
25 not try to add wording.

1 MR. JOSEPHSON: Well, Mr. Chairman.  
2 MR. REED: Mr. Josephson.  
3 MR. JOSEPHSON: It must be for breach of the public  
4 trust.  
5 MR. GARNETT: Yes.  
6 MS. STURGULEWSKI: Sure.  
7 MR. JOSEPHSON: It can't be because someone doesn't  
8 like the.....  
9 MS. STURGULEWSKI: (Indiscernible).  
10 MS. FROHNE: Well, I wasn't so much fearful that  
11 they.....  
12 (Simultaneous speech)  
13 MS. FROHNE: .....fearful that (indiscernible).....  
14 (Simultaneous speech)  
15 MS. FROHNE: .....unduly removed, but I would be more  
16 fearful that they would leave them in, in spite of cause.  
17 UNIDENTIFIED MALE SPEAKER: I see.  
18 MR. REED: Is there any further discussion?  
19 MS. FROHNE: Because they were part of the body.  
20 MS. STURGULEWSKI: Call for the question on item  
21 seven.  
22 MS. FROHNE: I'm not scared of the other side. I'm  
23 scared that they might even leave them in, even though there  
24 was cause.  
25 UNIDENTIFIED MALE SPEAKER: Yeah.

1 MS. ANGVIK: Did you drop the amendment?  
2 MS. FROHNE: No, I have not. I'm not sure it  
3 (indiscernible).....  
4 MS. STURGULEWSKI: I didn't hear a second on that.  
5 I'm sorry.  
6 UNIDENTIFIED MALE SPEAKER: I did.  
7 MS. STURGULEWSKI: Excuse me.  
8 UNIDENTIFIED MALE SPEAKER: Yeah.  
9 (Simultaneous speech)  
10 MS. FROHNE: It certainly isn't. I shall  
11 (indiscernible) to the far end of the table, Jane.  
12 MS. ANGVIK: Would you rather I (indiscernible)?  
13 MR. REED: There is no motion, except the main motion.  
14 MR. CHIEI: There is a motion.  
15 MS. STURGULEWSKI: Apparently, they did make a motion.  
16 I didn't hear (indiscernible).....  
17 MR. REED: They did make a motion?  
18 MS. FROHNE: I love you, but (indiscernible).....  
19 (Simultaneous speech)  
20 MR. REED: On the basis of facts found, all right.  
21 Question, who moved and who seconded?  
22 UNIDENTIFIED MALE SPEAKER: Mary and (indiscernible).  
23 UNIDENTIFIED FEMALE SPEAKER: Mary and Jane.  
24 MR. REED: Mary -- Mary and Jane.  
25 UNIDENTIFIED FEMALE SPEAKER: Who's a smoker?

1 UNIDENTIFIED FEMALE SPEAKER: I'm going  
2 (indiscernible).....

3 UNIDENTIFIED FEMALE SPEAKER: Jane.

4 MR. REED: On the basis of the -- of facts found,  
5 addition to the end of that paragraph, 7.01.....

6 MS. FROHNE: I'm not at all.....

7 (Simultaneous speech)

8 MS. FROHNE: .....scared that they'll remove them  
9 without cause, I'm scared that they might not move -- remove  
10 them even if there is.

11 MR. REED: Well, let's -- let's go to vote.

12 (Simultaneous speech)

13 MR. REED: All those in favor?

14 MS. ANGVIK: Aye.

15 MS. FROHNE: Aye.

16 UNIDENTIFIED MALE SPEAKER: No.

17 UNIDENTIFIED FEMALE SPEAKER: No.

18 MR. REED: Okay, rather (indiscernible) call role.

19 UNIDENTIFIED FEMALE SPEAKER: Did we (indiscernible).

20 MR. CHIEI: Read -- read the motion.

21 MR. REED: Okay. In the last sentence of 7.01,  
22 removal must be approved by 2/3 of the authorized membership  
23 of the Assembly or School Board, as the case may be, on the  
24 basis of the facts found, would be added.

25 MR. CHIEI: Basis of the facts found would be added?

1 MR. REED: Yeah. Angvik?  
2 MS. ANGVIK: Yes.  
3 MR. REED: Chiei?  
4 MR. CHIEI: No.  
5 MR. REED: Frohne?  
6 MS. FROHNE: Yes.  
7 MR. REED: Josephson?  
8 MR. JOSEPHSON: No.  
9 (No audible response)  
10 MR. REED: Parker?  
11 MR. CHIEI: Parker, where's Lisa?  
12 UNIDENTIFIED MALE SPEAKER: She's been out for a  
13 couple of minutes.  
14 MR. CHIEI: Well, she'll know what the issue is  
15 anyway.  
16 MR. REED: Parsons?  
17 MR. PARSONS: No.  
18 MR. REED: Reed? No. Sturgulewski?  
19 MS. STURGULEWSKI: No.  
20 MR. REED: The motion failed, one, two, three, four,  
21 five.....  
22 MS. STURGULEWSKI: Only because I think  
23 (indiscernible), Mary.....  
24 MR. REED: Five (indiscernible).....  
25 MS. FROHNE: I hope it is.

1 MS. STURGULEWSKI: Yeah.

2 MS. FROHNE: I hope it is.

3 MR. REED: Well, the main motion.....

4 MS. STURGULEWSKI: We never have a personal chance  
5 (indiscernible).....

6 MR. REED: .....before us to adopt Article VII in its  
7 entirety as submitted and amended. Questions?

8 MS. STURGULEWSKI: Question.

9 MR. REED: The questions is called. We should -- will  
10 I.....

11 UNIDENTIFIED MALE SPEAKER: Roll call?

12 UNIDENTIFIED MALE SPEAKER: Voice call.

13 MR. REED: All those in favor?

14 UNIDENTIFIED MALE SPEAKER: Aye.

15 UNIDENTIFIED FEMALE SPEAKER: Aye.

16 UNIDENTIFIED MALE SPEAKER: Aye.

17 MS. FROHNE: Mr. Chairman, I have one more. I'm  
18 trying to find where it ended.

19 MR. REED: All those opposed?

20 MS. FROHNE: I opposed because I've got one more.

21 MR. REED: It's the sense of the Commission to.....

22 UNIDENTIFIED MALE SPEAKER: Yeah, I wasn't ready  
23 either, to vote, Mr. Chairman.

24 MR. REED: The Chairman is trying to speed the thing  
25 along.



**MUNICIPALITY OF ANCHORAGE**  
**Assembly Information Memorandum**

No. AIM 101-2022

Meeting Date: June 7,2022

1 **From:** Chair LaFrance

2

3 **Subject:** BAYSHORE-KLATT COMMUNITY COUNCIL RESOLUTION AND  
4 HILLSIDE COMMUNITY COUNCIL LETTER REGARDING  
5 AO 2022-60.

6

7 Please see the attached resolution from the Bayshore-Klatt Community Council and  
8 the Hillside Community Council Board of Directors letter for your review and  
9 information.

10

11

12 Prepared by: Karissa Sleppy, Agenda Assistant

13 Approved by: Barbara A. Jones, Municipal Clerk

14 Respectfully submitted: Suzanne LaFrance, Chair

1 **Bayshore Klatt Community Council Resolution**

2 Opposition of AO 2022-60

3  
4 **WHEREAS**, the Bayshore Klatt Community Council (BKCC) is an all-volunteer,  
5 self-governing neighborhood organization as stated in Article III of the Municipal  
6 Charter, and

7 **WHEREAS**, the Bayshore Klatt Community Council exists to afford citizens an  
8 opportunity for maximum community involvement and self-determination and  
9 Article IV to provide a direct and continuing means of citizen participation in local  
10 affairs and to preform those functions and exercise those powers granted or  
11 permitted by the provisions of municipal code 2.40.050 and 2.40.060, and

12 **WHEREAS**, Bayshore Klatt Community Council views the proposed ordinance  
13 AO 2022-60 as a move by the assembly to give them more power over the  
14 Executive branch and views this as a threat to the Separations of Powers  
15 between the Executive and Legislative branch by making it possible to unseat the  
16 duly elected Mayor with just a majority vote of the Assembly and

17 **WHEREAS**, the Municipal code already provides ways for voters to unseat the  
18 Mayor through a Referendum, Recall and violations as stated in the Code of  
19 Ethics and

20 **WHEREAS**, Bayshore Klatt Community Council views AO 2022-60 as a Breach  
21 of Public trust by any assembly person who votes in favor of AO 2022-60 and

22 **WHEREAS**, any assembly person who does vote in favor of AO 2022-60 should  
23 be removed from their seat for the Breach of Public Trust and

24 **WHEREAS**, the citizens of Anchorage expect both the Executive and Legislative  
25 branches of government to approach disagreements and conflict in a respectful  
26 and productive manner without threat of removal to be in the best interest of the  
27 citizens of Anchorage and

28 **WHEREAS**, sees AO 2022-60 will further unbalance the powers between the  
29 Executive Branch and the Legislative Branch which in turn will create even more  
30 instability, division and tension between not only the branches of government but  
31 also in the citizens of Anchorage

32 **NOW, THEREFORE, BE IT RESOLVED**, that Bayshore Klatt Community  
33 Council **opposes AO 2022-60** and requests that the Assembly does not move  
34 forward with AO 2022-60 and

35 **BE IT FURTHER RESOLVED**, that any assembly person who does vote in favor  
36 of AO 2022-60 should have an accusation document sent to the Municipal Clerk  
37 for removal for Breach of Public Trust.

38

39

40 Resolved this  26th day of  May 2022

41 Vote

42  10 yes,  3 no,   abstain

43

44 *Bruce Schulte* \_\_\_\_\_ 5/26/22 \_\_\_\_\_

45 Bruce Schulte, President Date

46 Bayshore Klatt Community Council

47

48 *Dave Weir* \_\_\_\_\_ 5/26/22 \_\_\_\_\_

49 Dave Weir, Vice President Date

50 Bayshore Klatt Community Council

HILLSIDE COMMUNITY COUNCIL  
BOARD OF DIRECTORS  
A LETTER OF SUPPORT FOR  
THE COOPERATIVE, BUT SEPARATE GOVERNANCE OF THE MUNICIPALITY OF  
ANCHORAGE

WHEREAS the Anchorage Municipal Charter (“the Charter”) specifically delineates the Executive Branch (the Office of the Mayor) and the Legislative Branch (the Assembly) as two separate and distinct branches of government; and

WHEREAS the separation of powers in the United States is enacted at federal, state and local levels to create a system of checks and balances; and

WHEREAS the Charter establishes a separation of powers in the Municipality of Anchorage, between the distinct branches, to prevent a concentration of power in any one branch, and to limit one branch from assuming the core functions of the other; and

WHEREAS Article IV of the Charter establishes the Assembly, which vests the legislative power of Anchorage in an assembly of twelve (12) duly elected members; and Article V of the Charter establishes the Office of the Mayor, which vests the executive and administrative power of Anchorage in the duly elected Mayor; and

WHEREAS Articles IV and V clearly divide the Municipal government into two branches, each with their own separate, independent powers and authority; and

WHEREAS a proposed Assembly Ordinance (“AO”) 2022-60 and an accompanying Assembly Memorandum (“AM”) 278-2022 were introduced at a meeting of the Anchorage Assembly on May 10, 2022 with stated purposes to include amending the Charter to grant powers of authority to the Assembly over elected officials, including the Mayor of Anchorage; and

WHEREAS AO2022-60 stated purpose is, in part “to fulfill the requirement of Anchorage Municipal Charter Section 7.02(b) that the Assembly by ordinance must establish specific procedures for removal of an elected official for breach of the public trust”; and

WHEREAS the Charter already contains specific, actionable procedures for the removal of an elected official. Part I, Article II, Section 1 of the Charter guarantees “rights to the people of Anchorage, that are granted in addition to the rights guaranteed by the Constitution of the United States of America and the Constitution of the State of Alaska, including the right of initiative; the right of referendum; and **the right to recall public officers**” (emphasis added); and

WHEREAS Part I, Article III, Section 3.03 provides that, “an elected official may be recalled by the voters in the manner as provided by law. A petition to place the recall of an elected official before the voters shall be signed by a number of qualified voters as required by law”.

BE IT RESOLVED that AO2022-60 will erode the separation of powers and the critical checks and balances established in the Charter by granting the Legislative branch an unequal concentration of power over the Executive branch.

BE IT FURTHER RESOLVED that the Hillside Community Council Board of Directors does not support AO2022-60, and respectfully encourages the Municipal Assembly to preserve the separation of powers provided in the Charter.

FINALLY, BE IT RESOLVED that the Hillside Community Council Board of Directors strongly supports and encourages the cooperative governance of our municipality by both branches of government, acting within their own separate capacities, working in unity for the betterment and future of the Municipality of Anchorage.

Respectfully submitted,

Hillside Community Council Board of Directors  
May 31, 2022



# MUNICIPALITY OF ANCHORAGE

## Assembly Information Memorandum

No. AIM 101-2022(A)

Meeting Date: July 12, 2022

1 **From:** Chair LaFrance

2  
3 **Subject:** HILLSIDE COMMUNITY COUNCIL SIGNED LETTER AND  
4 HUFFMAN/O'MALLEY COMMUNITY COUNCIL RESOLUTION  
5 REGARDING AO 2022-60.  
6

7 Please see the attached letter, updated with signatures, from the Hillside  
8 Community Council and resolution from the Huffman/O'Malley Community Council  
9 for your review and information.

10  
11  
12 Prepared by: Karissa Sleppy, Agenda Assistant  
13 Approved by: Barbara A. Jones, Municipal Clerk  
14 Respectfully submitted: Suzanne LaFrance, Chair

HILLSIDE COMMUNITY COUNCIL  
BOARD OF DIRECTORS  
A LETTER OF SUPPORT FOR  
THE COOPERATIVE, BUT SEPARATE GOVERNANCE OF THE MUNICIPALITY OF  
ANCHORAGE

WHEREAS the Anchorage Municipal Charter (“the Charter”) specifically delineates the Executive Branch (the Office of the Mayor) and the Legislative Branch (the Assembly) as two separate and distinct branches of government; and

WHEREAS the separation of powers in the United States is enacted at federal, state and local levels to create a system of checks and balances; and

WHEREAS the Charter establishes a separation of powers in the Municipality of Anchorage, between the distinct branches, to prevent a concentration of power in any one branch, and to limit one branch from assuming the core functions of the other; and

WHEREAS Article IV of the Charter establishes the Assembly, which vests the legislative power of Anchorage in an assembly of twelve (12) duly elected members; and Article V of the Charter establishes the Office of the Mayor, which vests the executive and administrative power of Anchorage in the duly elected Mayor; and

WHEREAS Articles IV and V clearly divide the Municipal government into two branches, each with their own separate, independent powers and authority; and

WHEREAS a proposed Assembly Ordinance (“AO”) 2022-60 and an accompanying Assembly Memorandum (“AM”) 278-2022 were introduced at a meeting of the Anchorage Assembly on May 10, 2022 with stated purposes to include amending the Charter to grant powers of authority to the Assembly over elected officials, including the Mayor of Anchorage; and

WHEREAS AO2022-60 stated purpose is, in part “to fulfill the requirement of Anchorage Municipal Charter Section 7.02(b) that the Assembly by ordinance must establish specific procedures for removal of an elected official for breach of the public trust”; and

WHEREAS the Charter already contains specific, actionable procedures for the removal of an elected official. Part I, Article II, Section 1 of the Charter guarantees “rights to the people of Anchorage, that are granted in addition to the rights guaranteed by the Constitution of the United States of America and the Constitution of the State of Alaska, including the right of initiative; the right of referendum; and **the right to recall public officers**” (emphasis added); and

WHEREAS Part I, Article III, Section 3.03 provides that, “an elected official may be recalled by the voters in the manner as provided by law. A petition to place the recall of an elected official before the voters shall be signed by a number of qualified voters as required by law”.

BE IT RESOLVED that AO2022-60 will erode the separation of powers and the critical checks and balances established in the Charter by granting the Legislative branch an unequal concentration of power over the Executive branch.

BE IT FURTHER RESOLVED that the Hillside Community Council Board of Directors does not support AO2022-60, and respectfully encourages the Municipal Assembly to preserve the separation of powers provided in the Charter.

FINALLY, BE IT RESOLVED that the Hillside Community Council Board of Directors strongly supports and encourages the cooperative governance of our municipality by both branches of government, acting within their own separate capacities, working in unity for the betterment and future of the Municipality of Anchorage.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C Warfield', with a large, stylized flourish at the end.

Carmela Warfield, President  
Hillside Community Council Board of Directors  
May 31, 2022

WHEREAS the Huffman/O'Malley Community Council as stated in Article III of the Municipal Charter exists to afford citizens an opportunity for maximum community involvement and self-determination and Article IV to provide a direct and continuing means of citizen participation in local affairs and to perform those functions and exercise those powers granted or permitted by the provisions of municipal code 2.40.050 and 2.40.060,

WHEREAS Huffman/O'Malley Community Council views the proposed ordinance AO 2022-60, as a threat to the Separations of Powers between the Executive and Legislative branch by making it possible to unseat the elected Mayor with a 2/3rds vote of the Assembly,

WHEREAS the Municipal Code already provides ways to unseat the Mayor through Referendum, Recall and violations as stated in the Code of Ethics,

WHEREAS this proposed AO 2022-60 will create instability, division, and discord in the Municipality of Anchorage now and in the future,

WHEREAS the Assembly and Mayor's office should have a healthy tension that keeps government balanced, and the minority represented,

WHEREAS the citizens of Anchorage expect both branches to approach disagreements and conflict in a respectful and productive manner without threat of an elected officials removal and to keep the best interest of Anchorage and its citizens as the priority,

WHEREAS action listed in the proposed AO 2022-60 as constituting a breach of the public trust, applying only to the Mayor, are already covered in the Code of Ethics,

NOW THEREFORE BE IT RESOLVED Huffman/O'Malley CC supports the current Code that the branches of government within the Municipality of Anchorage stay separate, keeping the powers of the Assembly and the powers of the Mayor the same as contained in the Municipal Code as to retain public trust and avert the institutional chaos, further eroding of the public trust in its government.

Resolved the 19<sup>th</sup> day of MAY 2022

Vote

11 YAYS / 2 abstain / 0 NAYS



Signature

President - HOC

Title



**MUNICIPALITY OF ANCHORAGE**  
**Assembly Information Memorandum**

No. AIM 124-2022

Meeting Date: July 12, 2022

1 **From: ASSEMBLY MEMBER ALLARD**  
2

3 **Subject: AO 2022-60(S): AN ORDINANCE OF THE ANCHORAGE**  
4 **ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE CHAPTERS 3.10,**  
5 **GENERAL PROVISIONS, AND 27.20, SUPERVISORY BOARDS, AND**  
6 **SECTIONS 2.70.030 AND 29.10.060 TO FULFILL THE REQUIREMENT OF**  
7 **ANCHORAGE MUNICIPAL CHARTER SECTION 7.01(b) THAT THE**  
8 **ASSEMBLY BY ORDINANCE MUST ESTABLISH SPECIFIC PROCEDURES**  
9 **FOR REMOVAL OF AN ELECTED OFFICIAL FOR BREACH OF THE PUBLIC**  
10 **TRUST.**  
11  
12

13 For the Assembly's consideration; please see the attached e-mailed statement  
14 from Crystal Kennedy regarding AO 2022-60(S).  
15  
16  
17

18 Prepared by: Assembly Counsel  
19

20 Respectfully submitted: Jamie Allard, Assemblywoman  
21 District 2, Chugiak, Eagle River, Birchwood  
22 and Eklutna  
23  
24

**From:** [Crystal Kennedy](#)  
**To:** [IMAS Assembly Members](#)  
**Subject:** Opposition to AO2020-60 (S)  
**Date:** Tuesday, July 12, 2022 5:45:01 PM

---

[EXTERNAL EMAIL]

Dear Assembly members,

I am strongly opposed to AO 2022-60(S) as it proposes to allow for authorizing the removal of a mayor, and increasing the authority of the Assembly making it even easier to remove members of their own body and those of the Anchorage School Board. The authority proposed to be granted by this ordinance far exceeds that which should be allowed by one governing body and further erodes the very delicate balance in the separation of powers concept that Americans have valued for centuries.

This ordinance would add an additional level of legal process designed to allow attorneys to interpret the allegations of any action taken by the targeted elected official and attempts to replace the role of the Courts that is currently the next step in resolving any discrepancy or disagreement in the referenced action. This is unnecessary and unfair.

The ordinance amounts to a potential abuse of power that could essentially be used against any mayor of any political bent both now and into the future. It amounts to tactics of threatening and bullying those who disagree, disguised as a charge of a breach of public trust. It provides for any kind of legal opinion of any attorney who would be hired to plead your case and avoids the use of the Courts which is sworn to be fair and unbiased in that interpretation. Hired attorneys are not held to that same standard, nor would they be expected to be if they are hired by the Assembly to make that finding of such a charge.

There will always be the potential of disagreeing on an issue with another elected official but that never gives an elected official the right to eliminate that person from their duly elected position. If this ordinance had existed in the past, it certainly would have been used against other mayors creating more law suits and wreaking havoc within our local government on a regular basis. We can't afford that, even if some would have welcomed that kind of chaos in our government. Please don't fall for that kind of approach in dealing with controversy.

If there is a positive in this whole exercise in addressing this AO it is that it highlights how other parts of the Municipal code is already an overreach of authority by the Assembly. I hope that you will, instead of passing the ordinance, review the legality of any removal of any elected official per charter or code, in light of the long accepted and revered concept of the separation of powers that is foundational to our democracy. The authority and right to govern of all of our elected offices rests in the power of the voters who elected our citizens to those offices. Our citizens have the sole right to remove any official either by the regular election process or by recall. Those are important tools for citizens. Let that right remain in the voters' hands, rather than promote a tool that could be fueled by personal vindictiveness and political combativeness.

Please keep in mind, speaking as a former Assembly member, that the role of the Assembly member is to develop good public process and to be good stewards of the public funds to the best of the member's ability as they represent the majority of their constituency. It is not to make sure that any other elected official votes to implement one's own personal agenda or to decide who does or doesn't keep their duly elected position. Furthermore, attempting to reduce the role and responsibility of the elected mayor to one of simply being the "Assembly's manager" is well outside of the purview of an Assembly member. The roles are meant to be separate and a difference of opinion on how and when codes, regulations and even budgetary expenditures needs to be executed are bound to occur. It's the nature of the beast we all live with as we attempt to govern as citizen-elected officials.

As individuals, we each have the right to express our opinion, and vote accordingly, but the Assembly, as a body, should not have the right to remove, fire, or eliminate another elected official, period. As I did myself several months ago for the sake of peace and of having a better conversation by which to reconcile an issue (the homelessness housing development plan), my advice to you is to move to postpone indefinitely and allow this to die that same quiet death as well.

Kindest regards,  
Crystal Kennedy

20040 New England Dr.  
Eagle River, AK 99577

Crystal Kennedy  
crystalk@gci.net  
907-351-1430



MUNICIPALITY OF ANCHORAGE  
MAYOR DAVE BRONSON

OFFICE OF THE MAYOR

Date: July 16, 2022  
To: Anchorage Assembly  
From: Mayor Dave Bronson   
Subject: Veto of Ordinance No. AO 2022-60(S), as amended



Pursuant to Section 2.30.100 of the Anchorage Municipal Code (AMC) and Section 5.02 of the Municipal Charter, I hereby veto AO 2022-60(S), as amended, which passed at the Assembly's regular meeting of July 12, 2022.

Since its adoption in 1975, the Anchorage Charter largely preserves to the voters the power to install and remove government officials who serve in the highest levels of Municipal government. A very narrow carve-out from that retained power is found in Charter Section 7.01, which provides that an elective office holder may be removed from office, by means other than the ballot box, if that office holder has breached the public trust.

When drafting the Charter, the Charter Commission recognized that there needs to be a procedure through which a determination can be made as to whether a "breach of the public trust" has occurred. Consequently, the Charter requires the Assembly to develop such a procedure "including provision for notice, a complete statement of the charge, a public hearing conducted by an impartial hearing officer, and judicial review". When directing that the Assembly is to establish procedural safeguards, however, the Charter does not authorize the Assembly to create additional substantive offenses for which an elected official may be removed from office. Nor does it authorize the Assembly to violate other Charter provisions or otherwise act unconstitutionally.

I am aware that Assembly members have used this Ordinance as a vehicle to try to send chills through the current administration, and that some members have publicly acknowledged that the Ordinance was introduced as a means to erect boundaries intended to circumscribe the legitimate exercise of executive power. I have heard the arguments and discussions that were presented for and against the ordinance, and well understand the disdain that was repeatedly expressed during public testimony. That I sympathize with the public's frustration, however, is not a reason for my decision to veto this legislation. Nor do I veto this Ordinance because the optics are bad or because other elected officials sometimes act in bad faith. I do not veto because the Ordinance arises from a partisan effort to attack the executive branch and certain policies with which various Assembly members disagree. To the contrary, I veto AO 2022-60(S) because it creates specific conflicts with the Municipal Charter, and is therefore unconstitutional.

Where the Ordinance goes beyond adopting a procedure to be followed in removing elected officials, and defines conduct as being an offense for which removal is warranted, the Ordinance impermissibly crosses the line from procedure to substance. In this regard, as to each of four groups of elected officials, the Ordinance states that enumerated conduct "shall"



MUNICIPALITY OF ANCHORAGE  
MAYOR DAVE BRONSON

---

OFFICE OF THE MAYOR

be a breach of the public trust. The use of the word “shall” impermissibly removes discretion on the part of the decisionmakers. Thus, for example, with respect to mayors, while a “substantial” breach of a Code-imposed duty (i.e., a duly enacted ordinance) is deemed a breach of the public trust, any failure to execute a directive of a duly enacted ordinance, regardless of whether the failure is substantial or insubstantial, is also deemed a breach of the public trust. It does not matter if the “duly enacted ordinance” that the theoretical mayor failed to follow is itself unconstitutional or otherwise suffering from some infirmity that may create a duty for a mayor to refuse to adhere to its directives. Under the plain language of the proposed ordinance, the decisionmaker must find that there has been a breach of the public trust if the referenced conduct technically occurred. This is especially so with respect to mayors, assembly members, and members of supervisory boards, in that Sections 2(F), 3(G), and 4(G) of the Ordinance require the fact finder to determine “whether those actions alleged constitute a breach of the public trust *as set forth in subsection A. of this section*”, which is to say, as provided in the relevant Subsections A, that the conduct at issue “shall” be a breach.<sup>1</sup>

The fact that different conduct is proscribed for different officials also reveals it to be impermissibly substantive, and not merely an exemplification of breaches of the public trust. For example, it is necessarily a breach of the public trust under the Ordinance for a mayor or a member of a supervisory board to order an employee to undertake an unlawful act, but the identical conduct, if committed by an Assembly member or a member of the School Board, is not met with the same proscription.

It is also instructive that with respect to members of supervisory boards, the requirement in Section 1 of the Ordinance that they must not fail to attend three consecutive meetings without excuse, and that they must not fail to attend 2/3 of the meetings in any calendar year without excuse, is expressly stated as NOT being a breach of the public trust, but rather a Code imposed requirement that is “in addition” to the requirements of Charter Section 7.01. This is inconsistent with the assertion in Sections 4 and 5 that a failure to attend meetings is necessarily a breach of the public trust, and further reveals the Ordinance to be something other than a mere procedure for removing elected officials who have breached the public trust.

When the plain language of the Ordinance provides that the decisionmaker will not be permitted to decide in each instance whether the conduct charged against an elected official is in fact a breach when considered in its rightful context, I have no choice but to veto the Ordinance. As well, I must recognize that the ordinance is arbitrary and capricious when it defines specific conduct as a breach of the public trust only when committed by specified elected officials but not others. I cannot ignore the constitutional requirements of equal protection as it applies here, and so must veto this Ordinance.

---

<sup>1</sup> Curiously, although Section 5(A) provides that specified conduct on the part of School board Members “shall” be a breach, Section 5(G) requires the fact finder to determine only “whether those actions alleged constitute a breach of the public trust” without a duplicate reference to the mandate that such conduct “shall” be found to be a breach.

7/16/22  
[Signature]



MUNICIPALITY OF ANCHORAGE  
MAYOR DAVE BRONSON

---

OFFICE OF THE MAYOR

A separate constitutional issue is presented by the Ordinance in that Charter Section 5.04 expressly provides that the municipal attorney “shall advise and assist the municipal government on legal matters”. Section 3 of the ordinance purports to give the Assembly the power to appoint “an impartial third-party attorney” as a special counsel to substitute for the municipal attorney to “review the accusation document for legal sufficiency”. This provision is in conflict with Charter Section 5.04 and the separation of powers doctrine.

I have no doubt that the Assembly may hire its own counsel to provide it with advice when it is carrying out its own duties. What it may not permissibly do, however, is require that the Municipal Attorney stand aside while some outside counsel is arbitrarily substituted for the Municipal Attorney for the purpose of reviewing an accusation prepared by either the Board of Ethics or the Assembly.

It might subsequently be argued as an afterthought that some procedure is needed to address situations in which a Municipal Attorney has a conflict of interest that precludes him or her from reviewing an accusation. However, the Ordinance does not deal with instances in which there is a conflict of interest, but rather merely assigns to the Assembly the power to arbitrarily hire an attorney of its choosing to substitute for the Municipal Attorney.<sup>2</sup> That delegation of power is in conflict with Charter Section 5.04. The Ordinance must be vetoed accordingly.

I want to point out a technical error in the proposed Ordinance that has unknown effects. Who is allowed to submit an accusation document? And to whom does it go? Per Sections 2(B), 3(B), 4(B), and 5(B), proceedings for removal from office “may only be initiated by delivery of an accusation document to the municipal clerk.” But the same sentence later states that the accusation document must specify if delivery is “to the assembly or the board of ethics.” So, who delivers the accusation, and to whom is it delivered? Given the context and the pre-amendment Code sections applicable to Assembly Members and School Board Members, I think the Assembly intended that accusation documents could only originate *from* itself or the board of ethics, and further intended that the accusation document would then go *to* the municipal clerk. (This intention could be effected by changing the preposition “to” to “from” at, e.g., line 22, page 5, AO 2022-60(S)). But, by forcing through this ordinance on an expedited basis and circumventing a full debate among members, the Assembly’s intent is unclear, and I must veto for vagueness.

After the floor amendments offered on Tuesday, I see that the Assembly recognizes that there are heightened due process concerns regarding the removal of elected officials. That is how I understand the higher evidentiary standard of “clear and convincing evidence” effected by Zaletel Amendment No. 4, and the unnumbered Dunbar Amendment removing “official oppression” as a category of breach of the public trust. But these heightened due process considerations are inconsistent with the Assembly amending current Code to reduce the vote to submit an accusation from two-thirds to a simple majority.

---

<sup>2</sup> It must be noted that in situations where the Assembly is the accuser, there is also a blatant conflict of interest in having the Assembly determine who should review the Assembly’s accusation for legal sufficiency.

7/16/22  
*[Signature]*



**MUNICIPALITY OF ANCHORAGE**  
**MAYOR DAVE BRONSON**

---

**OFFICE OF THE MAYOR**

The Assembly has ignored its obligation under Charter Section 7.01 for 47 years. Clearly, where the Assembly leadership continually reports to the press that they have no intention to actually use this Ordinance any time soon, there is no basis upon which the Assembly can assert that there is a pressing need to get this legislation into Code, or to continue to be divisive in the process. The Assembly needs to step back and critically examine their effort, taking whatever additional time may be necessary to develop an ordinance that fully complies with the Charter. After 47 years, that amount of time will be negligible by comparison.

Accordingly, I am compelled to veto AO 2022 – 60(S), as amended.

7/14/22



# MUNICIPALITY OF ANCHORAGE

## ASSEMBLY MEMORANDUM

No. AM 414-2022

Meeting Date: August 1, 2022

1 **From: Assembly Counsel**  
2 **Subject: Legal Analysis of Mayor's Veto Message re: AO 2022-60(S), As**  
3 **Amended.**  
4

5 The Mayor's July 16, 2022 veto message of AO 2022-60(S), as amended,  
6 acknowledges:

- 7
- 8 - that Anchorage Municipal Charter § 7.01, not AO 2022-60(S), creates the  
9 rule that elected officials may be removed by the Assembly for "breach of the  
10 public trust,"<sup>1</sup> and
  - 11
  - 12 - that the Charter commands the Assembly to adopt procedures "including  
13 provision for notice, a complete statement of the charge, a public hearing  
14 conducted by an impartial hearing officer, and judicial review."<sup>2</sup>  
15

16 Anchorage Municipal Ordinance 2022-60(S), as amended, (the "Ordinance") fulfills  
17 the Charter's command. It enacts procedural safeguards to ensure an elected  
18 official will receive adequate notice of any charges; a complete statement of the  
19 charges; a public hearing conducted by an impartial hearing officer; and the  
20 opportunity to seek judicial review. Further, it guarantees to an accused elected  
21 official the right to be represented by counsel afforded, paid for by the municipality,  
22 and permits the elected official to participate in the selection of the impartial hearing  
23 officer. The ordinance, for the first time, guarantees these procedural safeguards  
24 to elected members of municipal service boards, and to the mayor. It also clarifies  
25 procedures applicable to the removal of assembly and school board members.  
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27 The Mayor's veto, if not overridden, would leave the command of Charter section  
28 7.02(b) unfulfilled. In substance, the Mayor's veto message indicates a belief that  
29 the ordinance:  
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1 See Mayor Dave Bronson, Veto of Ordinance No. AO 2022-60(S), as amended at ¶ 2.

2 *Id.* at ¶ 3. Cf. Anchorage Municipal Charter at section 7.01(b):

Proceedings for removal of an elected official for breach of the public trust may be initiated by a majority of all members of the assembly, or the school board in the case of removal of a school board member. In addition, proceedings for removal may be initiated by any duly constituted ethics board. The assembly by ordinance shall establish procedures for removal of elected officials for breach of the public trust, including provision for notice, a complete statement of the charge, a public hearing conducted by an impartial hearing officer, and judicial review. Removal must be approved by two-thirds of the authorized membership of the assembly or school board as the case may be.

- 1 ● by continuing the practice adopted by the Assembly in 1993 to provide
- 2 additional notice of what actions can amount to “breach of the public trust,” “creates
- 3 additional substantive offenses for which an elected official can be removed from
- 4 office” and thereby “impermissibly crosses the line from procedure to substance”<sup>3</sup>
- 5 ● removes discretion from assembly members by use of the word “shall”<sup>4</sup>
- 6 ● impermissibly treats different elected officials differently by, for example,
- 7 providing that Assembly Members can breach the public trust by failing to attend
- 8 assembly meetings, while the Mayor is not required to attend Assembly meetings,<sup>5</sup>
- 9 and
- 10 ● should give the Mayor’s appointed Municipal Attorney a role in every removal
- 11 process.<sup>6</sup>
- 12 (The mayor also suggests that the ordinance may contain a typo.<sup>7</sup>) The Mayor’s
- 13 arguments are variously mistaken, or misdirected.

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15 First, relevant to this matter and the Mayor’s grounds for veto are certain general

16 principles for interpreting ordinances. One of them is that statutes, or ordinances,

17 validly enacted by the legislative branch are conferred a presumption of

18 constitutionality, and doubts are resolved in favor of constitutionality.<sup>8</sup> That one

19 reading of an ordinance may be viewed as invalid does not require a court to rule it

20 so, a narrowing construction may be provided. While the Mayor casts some doubt

21 on the validity of the Ordinance, a court would resolve such arguments in favor of

22 upholding it. Another general rule for construing statutes is that technical errors or

23 typos do not invalidate the whole legislation; when construing a

24 municipal ordinance, case law requires courts to, whenever possible, interpret each

25 part or section ... with every other part or section, so as to create

26 a harmonious whole.<sup>9</sup> The technical “errors” and potential problematic

27 interpretations of the Ordinance the Mayor’s veto message points out may be

28 resolved by a reasonable interpretation and application of the Ordinance so it is a

29 harmonious whole with a fairly specific removal procedure. His points may also

30 form the basis for a “clean-up” ordinance to improve it, as often occurs in the history

31 of Anchorage. But, these technical imperfections do not render the Ordinance

32 invalid.

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<sup>3</sup> Veto of Ordinance No. AO 2022-60(S), as amended at ¶ 3, 5.

<sup>4</sup> *Id.* at ¶ 6.

<sup>5</sup> *Id.* at ¶ 7,8.

<sup>6</sup> *Id.* at ¶ 12.

<sup>7</sup> *Id.* at ¶ 13. The Mayor indicates that “to” should have been “from” in the following sentence: “Proceedings for removal from office may only be initiated by delivery of an accusation document to the municipal clerk setting forth the grounds for removal and specifying if delivery is to the assembly or the board of ethics.”

While “from” would also make sense in the context of the sentence, as written, the sensible interpretation of the phrase is to require an accusation document to “specif[y]” which body the person submitting the accusation document intends to consider it: the Assembly or the Board of Ethics. The Charter allows either body to “initiate” removal proceedings, and the Ordinance allows the submitter to direct the Municipal Clerk to which of these to deliver it. The next step is the vote to initiate proceedings, and if passed then submit to the Municipal Attorney and service on the subject elected official.

<sup>8</sup> *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 196 n.54 (Alaska 2007); see also *State, Dep’t of Revenue v. Andrade*, 23 P.3d 58, 71 (Alaska 2001).

<sup>9</sup> *Corkery v. Municipality of Anchorage*, 426 P.3d 1078, 1086 (Alaska 2018).

1 Second, The Mayor stated: “[t]he Charter does not authorize the Assembly to create  
2 additional substantive offenses for which an elected official may be removed from  
3 office.” This misstates the rules for construing the Charter and scope of the  
4 Assembly’s legislative powers. The Charter Commission commentary to § 17.11,  
5 “Interpretation,” states: “[a]s used in this Charter, ‘may’ is permissive, ‘shall’ is  
6 mandatory, and ‘may not’ or ‘shall not’ are prohibitive.” No law prohibits the  
7 Assembly from providing to elected officials advance notice of the kinds of activities  
8 that will amount to a “breach of the public trust.” The Charter’s command that the  
9 Assembly *must* adopt procedures to govern removal is not a prohibition on the  
10 Assembly providing some additional clarity on what, substantively, can constitute a  
11 breach of the public trust.<sup>10</sup> The test is one of prohibition, not whether there has  
12 been authorization.<sup>11</sup> Here, the Assembly’s enactment of removal procedures  
13 fulfilled a mandate under Charter § 7.01(b) that it “shall” enact such a process; but  
14 this mandate was not prohibitive language and thus does not restrict the Assembly  
15 from enacting substantive provisions to define or add context to the term “breach of  
16 the public trust.” There is no prohibition, and specific authorization in the Charter is  
17 not required for home rule legislative action. Indeed, the Assembly in 1993  
18 considered an ordinance that would have provided no additional definition or clarity  
19 surrounding the type of conduct that may constitute “breach the public trust”; then,  
20 as now, the Assembly, for good cause, rejected that approach.<sup>12</sup>

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22 Third, the Ordinance’s use of the word “shall” in the phrase “actions constituting a  
23 breach of the public trust shall include,” does not impermissibly remove Assembly  
24 or School Board discretion. It clarifies that, for instance, “perjury” should be  
25 considered an “action constituting a breach of the public trust,” and should be  
26 considered by a reviewing attorney or hearing officer as such. It does not, however,  
27 *require* an individual Assembly member to vote to initiate removal proceedings, or  
28 to vote for removal in any particular circumstance; it remains for individual members  
29 to determine, for instance, whether a particular act of perjury warrants initiation of  
30 removal proceedings and/or actual removal.

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32 Fourth, Equal Protection requires similarly situated individuals to be treated

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<sup>10</sup> See ANCHORAGE MUNICIPAL CHARTER section 7.02(b) (containing no prohibition that precludes adopting an ordinance that provides further definition to “breach of the public trust”); section 4.01 (legislative power vested in the Assembly); section 3.01 (“The municipality may exercise all legislative powers not prohibited by law or this Charter”); Commentary of 1975 Charter Commission on section 3.01 (“This section brings all allowable legislative power from the state level to the local level.”); ANCHORAGE MUNICIPAL CHARTER section 17.11(b) (“References in this Charter to particular powers, duties and procedures of municipal officers and agencies may not be construed as implied limitations on other municipal activities not prohibited by law.”);

<sup>11</sup> See *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974), the seminal case on construing municipal home rule powers under the Alaska Constitution. As examples, the Alaska Supreme Court has found no prohibition in the Charter that restricts the method the Assembly uses to make appropriations, (*Municipality of Anchorage v. Frohne*, 568 P.2d 3, 6 (Alaska 1977) (*citing* McQuillins: The Law of Municipal Corporations), or prohibits the use of an assessment district to finance special services. *L St. Invs. v. Municipality of Anchorage*, 307 P.3d 965, 971 (Alaska 2013). In *L Street Investments*, the court noted the Charter’s use of the permissive term “may” could not be prohibitive for using other means not mentioned, because the Charter Commission could have easily included a prohibitive term if it intended to disallow assessment districts to finance special services, but did not.

<sup>12</sup> See proceedings related to AO 1993-54, AO 1993-54(S), and AO 1993-54(S-1).

1 similarly. It does not require dissimilarly situated individuals to be treated identically.  
2 The procedures and substantive clarifications contained in AO 2022-60(S), As  
3 Amended, are virtually identical across the four categories of elected officials: (1)  
4 assembly members, (2) school board members, (3) the mayor, and (4) members of  
5 elected service area boards. Where the procedures and clarification differ, the  
6 differences attend to meaningful distinctions—Assembly members must attend  
7 Assembly meetings to perform their elected function; the Mayor need not. The  
8 Mayor is an executive officer, who must execute laws adopted by the Assembly; the  
9 Assembly is a legislative body that does not have executive authority. Service area  
10 board members are involved in a relatively narrow piece of municipal business; the  
11 Mayor and Assembly members govern the Municipality as a whole. Differences in  
12 the ordinance attend to these real, and meaningful, distinctions.

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14 Last, section 7.01(b) does not define, or a require a role for the Municipal Attorney  
15 in removal proceedings at all. That the Assembly has elected to provide one for the  
16 Municipal Attorney in most settings, does not obligate it to afford the Municipal  
17 Attorney a role in all circumstances, particularly where it may have concerns about  
18 the Municipal Attorney's ability to be impartial. As an appointee by the mayor placed  
19 in the executive branch, Art. V of the Charter, that "serves at the pleasure of the  
20 mayor," it is inherently conflicted for this person to evaluate the merits of an  
21 accusation for the removal of the mayor. The Ordinance established a procedure  
22 where the Municipal Attorney's legal review for sufficiency provides a safeguard  
23 against meritless accusations from advancing to the full hearing and subsequent  
24 process and removal vote, and to provide for a different third-party to provide this  
25 safeguard where the Municipal Attorney's appointing chief executive is the subject.  
26 As with the Equal Protection concerns, there are dissimilarities with the Municipal  
27 Attorney's relationship with the mayor as opposed to with the assembly, school  
28 board and elected service area board members. This is not a legal flaw, but a  
29 carefully crafted legal review process.

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31 For the foregoing reasons, Assembly Counsel disagrees with the legal premises  
32 asserted in the Mayor's veto message for the Ordinance.

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34 Respectfully submitted: Dean T. Gates  
35 Assembly Counsel  
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