

Municipal Clerk's Office

**Approved**

Date: 3/21/2017

Submitted by: Assembly Chair Gray-Jackson  
Assembly Vice-Chair Traini

Prepared by: Assembly Counsel,  
Municipal Ombudsman, &  
Municipal Clerk

For reading: February 28, 2017

**ANCHORAGE, ALASKA  
AO No. 2017-40**

**AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE CHAPTERS 2.20 AND 2.60 TO UPDATE PROVISIONS FOR THE ASSEMBLY COUNSEL'S OFFICE, THE ASSEMBLY PROGRAM AND BUDGET ANALYST, THE MUNICIPAL AUDIT COMMITTEE, AND THE OFFICE OF THE OMBUDSMAN; AND TO REPEAL REGULATION 2.60 OF THE ANCHORAGE MUNICIPAL CODE OF REGULATIONS (AMCR).**

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1  
2 WHEREAS, provisions in Anchorage Municipal Code Chapters 2.20 and 2.60  
3 providing for Assembly Counsel, the Assembly Program and Budget Analyst, the Municipal  
4 Audit Committee, and the Office of the Ombudsman are presented for update, now  
5 therefore,  
6

7 THE ANCHORAGE ASSEMBLY ORDAINS:  
8

9 **Section 1.** Anchorage Municipal Code section 2.20.055 is hereby amended to read as  
10 follows (*language indicating no amendment is included for context only and other*  
11 *subsections not affected are not set out*):  
12

13 **2.20.055 - Municipal clerk's office.**  
14

15 A. Organization.  
16

- 17 1. The Municipal Clerk's Office is established by Charter sections 4.05 and 4.06.  
18 The Municipal Clerk's Office shall consist of the following divisions, with the  
19 duties and responsibilities as set out hereinafter, in the Charter, and elsewhere  
20 in the Anchorage Municipal Code, or as may be established by the presiding  
21 officer of the Assembly:  
22

23 \*\*\* \*\*

- 24 d. Assembly Program and Budget Analyst. The general duties shall  
25 consist of annually preparing the Assembly Department Budget  
26 proposal for submission to the Assembly; assisting the Assembly in its  
27 analysis of the operating, capital and utility budgets prepared and  
28 presented by the administration, as may be directed by the presiding  
29 officer; administering the contract for the annual municipal independent  
30 financial audit and other contracts assigned to the Municipal Clerk's  
31 Office by ordinance; and the Assembly program and budget-related  
32 duties as assigned by the municipal clerk or the presiding officer.

[ASSEMBLY ATTORNEY. THE GENERAL DUTIES SHALL CONSIST OF PROVIDING LEGAL ADVICE TO THE ASSEMBLY, DRAFTING ORDINANCES, RESOLUTIONS AND MEMORANDA AND OTHER WORKING DOCUMENTS, CONDUCTING LEGAL RESEARCH AND PROVIDING OPINIONS TO THE ASSEMBLY AND ASSISTING THE MUNICIPAL CLERK AS DIRECTED BY THE PRESIDING OFFICER OF THE ASSEMBLY.]

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3. Appointments.

\*\*\* \*\*

[b. THE ASSEMBLY ATTORNEY SHALL BE SELECTED BY THE PRESIDING OFFICER, AND CONFIRMED BY THE ASSEMBLY.]

4. Notwithstanding section 3.30.172C.:

\*\*\* \*\*

[c.] [THE ASSEMBLY ATTORNEY MAY APPOINT AN ASSISTANT OR OTHER PERSONNEL NECESSARY TO CARRY OUT THE PROVISIONS OF THIS CHAPTER, IN CONSULTATION WITH THE PRESIDING OFFICER, WITHIN THE ASSEMBLY-ADOPTED BUDGET FOR THE MUNICIPAL CLERK'S OFFICE.]

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(AO No. 2005-138(S), § 2, 10-18-05)

**Section 2.** Anchorage Municipal Code chapter 2.20 is hereby amended by adding a new section 2.20.065 to read as follows:

**2.20.065 – Assembly Counsel.**

The Assembly Counsel shall be selected by the presiding officer, and the appointment shall be subject to confirmation by the Assembly.

- A. *Duties:* The general duties of the Assembly Counsel shall consist of providing legal advice to the Assembly, drafting ordinances, resolutions and memoranda and other working documents, conducting legal research and providing opinions to the Assembly and the Board of Adjustment, and assisting the Municipal Clerk as directed by the presiding officer of the Assembly.
- B. *Other personnel:* The Assembly Counsel may appoint an assistant or other personnel necessary to carry out the provisions of this chapter, in consultation with the presiding officer, within the Assembly-adopted budget for the Assembly Counsel's office.
- C. *Classification:* All positions in the Assembly Counsel's Office shall be assigned Assembly-appointed classifications in accordance with section 3.30.172.

- 1 D. *Access to information:* In the performance of duties under subsection A.  
2 above, the Assembly Counsel shall have full, free and unrestricted access to:  
3
  - 4 1. All public records, as defined in section 3.90.020;
  - 5
  - 6 2. All activities of the municipal government and its various departments;
  - 7
  - 8 3. All municipal property;
  - 9
  - 10 4. All municipal personnel; and
  - 11
  - 12 5. All policies, plans and procedures, and records pertaining to financial  
13 expenditures by municipal funds.
  - 14
  - 15 6. This subsection C. does not authorize public disclosure of confidential  
16 or privileged material under federal, state or local law, or of material, the  
17 public disclosure of which constitutes an unwarranted invasion of  
18 personal privacy.
  - 19
- 20 E. *Political activity:* Assembly Counsel and staff shall not publicly endorse,  
21 contribute to, or engage in any political or campaign activity on behalf of any  
22 candidate for elected municipal office or on behalf of any municipal ballot  
23 proposition, including service area ballot propositions.  
24
  - 25 1. Nothing in this subsection is intended to prohibit Assembly Counsel and  
26 staff from legal drafting, research, and other work performed at the  
27 request of an Assembly Member in the normal course of legislative  
28 duties of Assembly Counsel's Office.
  - 29
  - 30 2. Nothing in this subsection prohibits Assembly Counsel and staff from  
31 expressing private political opinion outside of the workplace, so long as  
32 such expression does not interfere with work performance.
  - 33
  - 34 3. Nothing in this subsection is intended to discourage or inhibit the  
35 exercise of voter franchise.
  - 36

37 **Section 3.** Anchorage Municipal Code Section 2.20.080 is hereby amended to read as  
38 follows (*language indicating no amendment is included for context only and other*  
39 *subsections not affected are not set out*):

40  
41 **2.20.080 - Municipal Audit Committee.**

- 42
- 43 A. The Municipal Audit Committee shall coordinate and may recommend audits  
44 on municipal agencies, activities and accounts. The Committee will be chaired  
45 by an Assembly Member and will be comprised of six members, three  
46 members appointed by the Assembly and three members appointed by the  
47 Mayor. The Committee will perform the following:  
48

- 1                    1.      Recommend external auditors to perform such independent financial  
2                    audits as required by section 6.40.060;
- 3
- 4                    2.      Oversee the independent financial audits to ensure that  
5                    requirements of the audit contracts are satisfied;
- 6
- 7                    3.      Consult with the Director of Internal Audit regarding technical issues  
8                    and review the annual audit plan;
- 9
- 10                   4.      Review and endorse the Office of Internal Audit's annual audit plan,  
11                   submit the annual audit plan to the Assembly and Mayor for  
12                   approval, and review and comment on any audit plan revisions;
- 13
- 14                   5.      Receive and review reports resulting from audits of municipal  
15                   agencies, activities and accounts; and
- 16
- 17                   6.      Selectively review management action taken to implement audit  
18                   recommendations contained in all reports of audit at a meeting of  
19                   the Municipal Audit Committee.

20  
21                    (AO No. 88-68(S); AO No. 92-81(S); AO No. 95-165(S-1), § 1, 10-3-95)

22  
23                    **Section 4.** Anchorage Municipal Code chapter 2.60 is hereby amended to read in its  
24                    entirety as follows (*amendments include new code sections drawn and codified in this*  
25                    *ordinance from provisions set out in Regulation 2.60 of the Anchorage Municipal Code of*  
26                    *Regulations (AMCR); for ease of reading, all-new code sections are identified adjacent to*  
27                    *the captions, in lieu of full text underscore*):

28  
29                    **Chapter 2.60 - Office of the Ombudsman**

30  
31                    **2.60.010 - Purpose.**

32  
33                    The Municipality hereby establishes, in addition to other remedies or rights of appeal,  
34                    an independent, impartial municipal office, readily available to the public, responsible  
35                    to the Assembly, empowered to investigate the acts of administrative agencies and to  
36                    recommend appropriate changes toward the goals of safeguarding the rights of  
37                    persons and of promoting higher standards of competency, efficiency and equity in  
38                    the provision of municipal services.

39  
40                    (AO No. 77-94)

41  
42                    **2.60.020 - Definitions.**

43  
44                    The following words, terms and phrases, when used in this chapter, shall have the  
45                    meanings ascribed to them in this section, except where the context clearly indicates  
46                    a different meaning:  
47

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

3  
4 Agent of the Municipality or agency includes a department, office, institution,  
5 corporation, authority, board, commission, committee or council of the Municipality,  
6 including boards and commissions established in title 4, a contractor providing  
7 service to the public on behalf of the municipality, and any officer, employee or  
8 member of such entities acting or purporting to act in the exercise of paid or non-paid  
9 municipal [THEIR OFFICIAL] duties. For purposes of the Ombudsman's jurisdiction  
10 under this chapter, the Assembly, Mayor, and Anchorage School Board are excluded.

11  
12 Allegation means a statement describing the complaint about an administrative act  
13 which is to be investigated.

14  
15 Complaint means the problem or concern presented to the Ombudsman.

16  
17 Complainant means the person who presents a complaint to the Ombudsman.

18  
19 Critical finding means a finding which is justified or partially justified or a  
20 recommendation which requests remedial action by an agency.

21  
22 Finding means the determination made by the Ombudsman about an allegation.

23  
24 Grievance means a complaint against the Ombudsman or a member of the  
25 Ombudsman's staff.

26  
27 Investigation means a formal inquiry about a complaint and will result in notice of  
28 allegation(s), a written report detailing the evidence considered, finding(s) and  
29 recommendation(s) made to the agency by the Ombudsman and the agency's  
30 response.

31  
32 Municipality and municipal mean the Municipality of Anchorage and the Anchorage  
33 School District.

34  
35 Person means natural person(s), joint venture, joint stock company, partnership,  
36 association, club, company, corporation, business trust, organization, and/or the  
37 manager, lessee, agent, servant, officer, or employee of any of them.

38  
39 Recommendation means the action proposed to the agency by the Ombudsman  
40 intended to resolve the complainant's concern, as well as those of all individuals who  
41 may be similarly impacted and to promote higher standards of competency, efficiency  
42 and equity in the provision of municipal and Anchorage School District services.

43  
44 Record means all records, documents, books, papers, files, photographs, microfilms,  
45 sound recordings, video recordings, magnetic storage media, computer data and all  
46 other materials (regardless of physical form, characteristics, or method of storage),  
47 created, generated, recorded, received, possessed or controlled by or on behalf of  
48 the municipality or any agent of the municipality.

1 Standard means the criterion by which an agency's actions will be evaluated as  
2 established in Anchorage Municipal Code subsection 2.60.110C.

3  
4 (AO No. 77-94; AO No. 89-45; AO No. 92-20)

5  
6 **2.60.030 - Establishment.**

7  
8 The Office of Ombudsman is established in the legislative branch of the Municipality  
9 pursuant to Charter Section 4.07.

10  
11 **2.60.040 - Appointment of Ombudsman.**

12  
13 A person may be nominated for appointment as the Ombudsman by a selection  
14 committee made up of Assembly Members. The appointment shall become effective  
15 if approved by a majority of the Assembly.

16  
17 (AO No. 77-94)

18  
19 **2.60.050 - Qualifications of Ombudsman; service in elective office; political**  
20 **activities by Ombudsman or staff.**

21  
22 A. *Qualifications of Ombudsman.* No person may serve as Ombudsman:

- 23  
24 1. While the person [HE] is engaged in any other service [OCCUPATION] for  
25 [WHICH HE RECEIVES] compensation, unless other service for  
26 compensation is approved in advance in writing by the Chair of the  
27 Assembly, as the responsible official. The written approval must  
28 include a determination that the contemporaneous service is compatible  
29 with the proper discharge of the Ombudsman's duties and will not  
30 adversely affect the person's availability, productivity, or independence  
31 of judgment as Ombudsman. The Assembly Chair's approval will be  
32 provided to the Assembly through an Assembly Information  
33 Memorandum.
- 34  
35 2. Within one year of the last day on which the person [HE] served as an  
36 elected official;
- 37  
38 3. While the person [HE] is a candidate for or holds any national, state or  
39 municipal elective office; and
- 40  
41 4. Unless the person [HE] has been a resident of the Municipality for at  
42 least one year.

43 B. *Subsequent service by Ombudsman in elective office.* A person shall not serve  
44 in any federal, state or municipal elective office until one year has elapsed  
45 from the last day on which the person [HE] served as the Ombudsman.

46  
47 C. *Political activities.* The Ombudsman and any permanent office staff may not  
48 actively participate in any municipal [, STATE OR FEDERAL] election campaign

1 and shall not make [. AN ADDITIONAL RESTRICTION SHALL PROHIBIT THE MAKING OF]  
2 political contributions to Assembly, School Board or mayoral candidates.  
3 Members of the Ombudsman's office shall not be prohibited from expressing  
4 private opinions, registering as to political party affiliation, serving as a  
5 delegate to party conventions, or voting.

6  
7 (AO No. 77-94)

8  
9 **2.60.060 - Term of office of Ombudsman.**

10  
11 The term of office of the Ombudsman shall be four [TWO] years, ending on December  
12 31, effective with appointment to the term beginning January 1, 2019 [OF THE EVEN-  
13 NUMBERED YEARS].

14  
15 (AO No. 77-94)

16  
17 **2.60.070 - Removal of Ombudsman.**

18  
19 During the term of office, the Ombudsman may be removed from office only [DURING  
20 HIS TERM] by a majority vote of the Assembly.

21  
22 (AO No. 77-94)

23  
24 **2.60.080 - Staff; delegation of duties.**

25  
26 A. The Ombudsman may appoint an assistant or deputy. The Ombudsman [HE]  
27 may also appoint other personnel including an Associate Ombudsman,  
28 necessary to carry out the provisions of this chapter, when in keeping with the  
29 Assembly-adopted budget for the Ombudsman's office.

30  
31 B. [THE OMBUDSMAN MAY DELEGATE TO HIS ASSISTANT OR DEPUTY ANY  
32 OF HIS DUTIES. HOWEVER, THOSE RESPONSIBILITIES DESCRIBED IN  
33 SECTION 2.60.130.B MAY BE DELEGATED ONLY IN WRITING AND ONLY  
34 BY REASON OF THE OMBUDSMAN'S ABSENCE DUE TO ILLNESS,  
35 VACATION OR BUSINESS.]

36  
37 [C.] The assistant, Associate Ombudsman, or Deputy Ombudsman shall succeed  
38 to all duties and responsibilities of the Ombudsman pursuant to delegation in  
39 writing by the Ombudsman [, INCLUDING THOSE SPECIFIED IN SECTION 2.60.130.B,  
40 WHEN HE IS SERVING AS THE ACTING OMBUDSMAN].

41  
42 C [D]. The Ombudsman ['s] and staff shall be classified [SELECTED] in accordance  
43 with the provisions of the personnel rules [REGULATIONS] relating to Assembly-  
44 appointed classifications [CLASSIFIED EMPLOYEES].

45  
46 (AO No. 77-94)

1           **2.60.090 - Compensation of ombudsman and staff.**  
2

- 3           A.     The Ombudsman's salary shall be set annually by the Assembly. Except as a  
4           department-wide revision to salaries within the Assembly department and  
5           approved by majority vote of the Assembly, the Ombudsman's salary may not  
6           be reduced during the Ombudsman's [HIS] term.  
7  
8           B.     The salary and benefits of the Ombudsman and [HIS] staff shall accrue  
9           according to the effective personnel rules [REGULATIONS] of the Municipality.

10  
11           (AO No. 77-94)  
12

13           **2.60.100 - Office facilities and administration.**  
14

- 15           A.     The Municipality shall provide suitable office facilities for the Ombudsman and  
16           staff in a location convenient for the public.  
17  
18           B.     The Ombudsman shall annually prepare a budget proposal for submission to  
19           the Assembly. Copies shall be provided to the Mayor for informational  
20           purposes to assist in the preparation of the municipal budget.

21  
22           [C.     THE OMBUDSMAN SHALL COMPLY WITH ALL ADMINISTRATION PROCEDURES  
23           PRESCRIBED BY ORDINANCE EXCEPT AS PROVIDED IN THIS SECTION. REQUEST  
24           FOR EXECUTIVE APPROVAL OF OFFICE MATTERS, SUCH AS OFFICE SUPPLIES,  
25           BUDGET AND PERSONNEL, SHALL BE SUBMITTED TO THE ADMINISTRATION IN  
26           PROPER FORM. IN ORDER TO ENSURE THE INDEPENDENCE AND OBJECTIVITY  
27           OF THE OMBUDSMAN, THE EXECUTIVE'S DISCRETIONARY DECISIONS SHALL BE  
28           CONSIDERED ADVISORY. THE EXECUTIVE BRANCH SHALL RETAIN THE  
29           AUTHORITY TO DENY ANY REQUEST WHICH IS OTHERWISE CONTRARY TO  
30           ORDINANCE OR WHICH EXCEEDS THE ASSEMBLY-ADOPTED BUDGET FOR THE  
31           OFFICE.]  
32

33           (AO No. 77-94)  
34

35           **2.60.110 - Jurisdiction.**  
36

- 37           A.     The Ombudsman may investigate the administrative acts of agents of the  
38           Municipality.  
39  
40           B.     The Ombudsman may investigate the administrative act of an agent of the  
41           Municipality on the Ombudsman's [HIS] own motion if the Ombudsman [HE]  
42           reasonably believes that it is an appropriate subject for review.  
43           C.     An appropriate subject for investigation by the Ombudsman is an  
44           administrative act which the Ombudsman has reason to believe might be:  
45  
46           1.     Contrary to law;  
47



2. Unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, or unnecessarily discriminatory even though in accordance with law;
3. Based on a mistake of fact;
4. Based on improper or irrelevant grounds;
5. Unsupported by an adequate statement or reasons;
6. Performed in an inefficient or discourteous manner; or
7. Otherwise erroneous.

D. The Ombudsman shall be barred from inquiry into acts of the Mayor, the Assembly or the School Board. [THE OMBUDSMAN SHALL RETAIN THE AUTHORITY TO APPEAL COMPLAINTS THROUGH THE EXECUTIVE BRANCH AND MAYOR TO THE ASSEMBLY.]

E. The Ombudsman may decline jurisdiction as described in other sections of this chapter.

(AO No. 77-94; AO No. 91-173(S); AO No. 92-20; AO No. 2015-23(S), § 3, 3-24-15)

**2.60.115 - Complaints. {New Code Section adapted from AMCR 2.60}**

- A. Any person may contact the Ombudsman by phone, letter, email, fax, in person, or by other means made available to the public by the Ombudsman's office.
- B. When possible, complaints will be reviewed for resolution through informal discussion with the complainant, review of agency action and consultation with all sides of a disputed action. If no basis for the complaint is discovered upon preliminary review, the complaint will be closed.
- C. The Ombudsman will review and investigate complaints substantially in order of the date received. When the resources of the office do not allow review of all complaints within a reasonable time, the Ombudsman may prioritize reviews according to, without limitation, these considerations:
  1. Complaints of an emergency nature requiring immediate review to prevent serious harm;
  2. Complaints involving time constraints, such as pending administrative or legislative action or public hearings;

1 3. Complaints involving recurring systematic prejudice, harm, or  
2 disadvantage as the result of administrative action or decision.

3  
4 D. No fees shall be charged for the submission, investigation or pursuit of  
5 complaints.

6  
7 E. Complaints alleging serious personal improprieties or conduct shall be filed  
8 in writing, particularly when the complaint, if found justified, could lead to  
9 disciplinary action against an employee.

10  
11 F. The Ombudsman may establish additional office procedures for receiving  
12 and processing complaints, conducting investigations and reporting findings.

13  
14 **2.60.120 - Investigation of complaints.**

15  
16 A. At the discretion of the Ombudsman, a complaint may be formally  
17 investigated to obtain information sufficient to allow a determination on the  
18 merits of the complaint.

19  
20 B. Staff of the Ombudsman's Office may interview the complainant, municipal  
21 employees and officials; review municipal practices and procedures; review  
22 and copy records; research ordinances, statutes, regulations; and utilize any  
23 information the Ombudsman deems relevant to assist in the Ombudsman's  
24 determination on the merits.

25  
26 C. The Ombudsman may examine, under oath, persons believed to have  
27 information relevant to the investigation. Testimony or production of  
28 documents may be compelled by subpoena.

29  
30 D. Notice of investigation, including a written statement of the complaint in  
31 general terms, will be provided to the municipal office or person against  
32 whom a complaint is made.

33  
34 E. During the course of an investigation, if information is exchanged which  
35 leads to satisfactory resolution for the complainant, the investigation may be  
36 discontinued.

37  
38 F. A preliminary investigation report containing proposed findings and  
39 recommendations may be presented to the agency at the termination of the  
40 investigation. When the report is critical of an agency, consultation in  
41 accordance with subsection 2.60.140.C is required. The preliminary report  
42 will be distributed to agency personnel designated by the Ombudsman. The  
43 report may be modified, at the discretion of the Ombudsman, if additional  
44 information is provided by the agency or modifications are requested.

45  
46 G. The Ombudsman will make a written finding based on the evidence  
47 obtained during the investigation, that the complaint or allegation is:

- 1           1.    *Justified*, if the Ombudsman determines or believes the  
2           complainant's criticism is valid;
- 3
- 4           2.    *Partially justified*, if the Ombudsman determines or believes that the  
5           complaint is justified and action or inaction by the complainant  
6           affected the outcome; or constraints of law, policy or procedure  
7           limited agency response; or only a portion of the complainant's  
8           criticism is valid;
- 9
- 10          3.    *Not supported*, if the Ombudsman determines or believes the  
11          complainant's criticism is not valid; or,
- 12
- 13          4.    *Indeterminate*, if investigation does not provide sufficient evidence  
14          for the Ombudsman to determine conclusively whether the  
15          complainant's criticism is valid or not valid.
- 16

17       H.    When the Ombudsman presents findings or recommendations to an agency,  
18       official or employee, seeking resolution to a complaint, the agency will  
19       accept the findings and recommendations or request modifications and  
20       notify the Ombudsman of any action taken on the recommendations within  
21       30 days.

22

23       I.    The final investigation report is a public document and may be noticed to the  
24       public by an Assembly Information Memorandum. The final investigation  
25       report will be distributed to the complainant and appropriate government  
26       officials.

27

28       J.    A complainant may request a report on the status of the investigation and the  
29       Ombudsman will provide a status report on the complaint within a reasonable  
30       time after receipt of the request, not to exceed 5 business days.

- 31
- 32           [A.    THE OMBUDSMAN MAY CEASE HIS INVESTIGATION OF A COMPLAINT
- 33                   WHEN THE COMPLAINANT HAS BROUGHT THE SAME MATTER TO THE
- 34                   ATTENTION OF THE COURTS FOR RESOLUTION.
- 35           B.    THE OMBUDSMAN MAY CEASE HIS INVESTIGATION OF A COMPLAINT
- 36                   WHEN HE REASONABLY BELIEVES THAT:
- 37                   1.    THERE IS PRESENTLY AVAILABLE AN ADEQUATE REMEDY FOR
- 38                   GRIEVANCE STATED IN THE COMPLAINT.
- 39                   2.    THE COMPLAINT RELATES TO A MATTER THAT IS OUTSIDE THE
- 40                   JURISDICTION OF THE OMBUDSMAN.
- 41                   3.    THE COMPLAINT RELATES TO AN ADMINISTRATIVE ACT OF
- 42                   WHICH THE COMPLAINANT HAS HAD KNOWLEDGE FOR AN
- 43                   UNREASONABLE LENGTH OF TIME BEFORE THE COMPLAINT WAS
- 44                   SUBMITTED.
- 45                   4.    THE COMPLAINANT DOES NOT HAVE A SUFFICIENT PERSONAL
- 46                   INTEREST IN THE SUBJECT MATTER OF THE COMPLAINT.
- 47                   5.    THE COMPLAINT IS TRIVIAL OR MADE IN BAD FAITH.



- 1 3. Disclosure of the complainant's identity is necessary to enable  
2 investigation of the complaint and the complainant refuses to allow  
3 such disclosure;  
4
- 5 4. It appears an applicable law or administrative procedure provided an  
6 adequate remedy which the complainant did not pursue, with no  
7 reasonable justification for the failure to do so;  
8
- 9 5. The complaint is presented anonymously and the Ombudsman does  
10 not initiate investigation on the Ombudsman's own motion;  
11
- 12 6. The subject of the complaint was recently investigated, the complaint  
13 presents no new issue, and the Ombudsman believes that further  
14 investigation would not advance the interests of the complainant or a  
15 significant public interest;  
16
- 17 7. The information provided by the complainant provides no specific or  
18 credible evidence to indicate an investigation is warranted;  
19
- 20 8. The complainant has no tangible personal stake in the outcome and  
21 the investigation would not advance a significant public interest;  
22
- 23 9. The matter has been brought to the courts for resolution or is in  
24 litigation.

25 **2.60.130 - Investigative powers.**

26  
27 A. In an investigation the Ombudsman may:

- 28  
29 1. Enter without notice to inspect the premises of a department during  
30 normal business hours and when departmental personnel are present.  
31
- 32 2. Review any municipal document or take testimony which the  
33 Ombudsman [HE] deems relevant to an investigation. Under no  
34 circumstances, however, shall the Ombudsman make public comment  
35 upon or otherwise publicly disseminate any material or information  
36 received by the Ombudsman's office [HIM] during the course of an  
37 investigation which is accorded confidential or privileged status by  
38 federal, state or local law, or which would otherwise result in an  
39 unwarranted invasion of personal privacy if released.  
40
- 41 3. [NOTWITHSTANDING] Any other provisions of law notwithstanding, have  
42 access to and examine and copy, without payment of a fee, any  
43 municipal or agency records, including records which are confidential  
44 by law, subject to applicable state or federal laws. The Ombudsman  
45 shall not have access to legally privileged records held by the Municipal  
46 Attorney, legal counsel for any municipal department or other authority,

1 or attorney-client records held by clients of the Municipal Attorney or  
2 other legal counsel to the municipality. The Ombudsman shall not  
3 disclose confidential records and shall be subject to the same penalties  
4 as the legal custodian of the records for any unlawful or unauthorized  
5 disclosure.  
6

7 B. Subject to the privileges which witnesses have in courts of this state, the  
8 Ombudsman may:

- 9
- 10 1. Compel by subpoena, at a specified time and place, the appearance  
11 and sworn testimony of a person whom the Ombudsman reasonably  
12 believes may be able to give information relating to a matter under  
13 investigation; and
  - 14 2. Compel a person, by subpoena, to produce documents, papers or  
15 objects which the Ombudsman reasonably believes may relate to the  
16 matter under investigation.  
17

18

19 C. If a person refuses to comply with a subpoena issued under subsection B of  
20 this section, the Superior Court may, on application of the Ombudsman,  
21 compel obedience by proceedings for contempt in the same manner as in the  
22 case of disobedience to the requirements of a subpoena issued by the court or  
23 refusal to testify in the court.  
24

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

26  
27 **2.60.135 – Conflict of Interest. {New Code Section adapted from AMCR 2.60}**

- 28
- 29 A. If, during the review or investigation of a complaint, the Ombudsman  
30 determines in writing that response by the Ombudsman or Ombudsman's  
31 staff could present a conflict of interest or significant risk to the public trust  
32 based on the appearance of a conflict of interest, the Ombudsman will  
33 promptly transfer the complaint to another staff member.  
34
  - 35 B. Any conflict of interest or significant risk to the public trust based on the  
36 appearance of a conflict of interest by the Ombudsman will be disclosed to  
37 the agency and the complainant. The Ombudsman may, at the  
38 Ombudsman's discretion, review and present findings and recommendations  
39 for a complaint transferred to another under this section.  
40

41 **2.60.140 - Recommendations.**

- 42
- 43 A. The Ombudsman may make recommendations for the resolution of  
44 complaints and inquiries in accordance with this chapter.  
45
  - 46 B. In seeking a resolution to a complaint or inquiry concerning the municipality,  
47 the Ombudsman may bring the matter to the attention of a department head,  
48 the Municipal Manager, the Mayor, the Assembly or the public.

- 1 C. Before offering a report or recommendation which is critical of a department  
2 or person, the Ombudsman shall consult with that department or person.  
3
- 4 D. The Ombudsman may require a department to notify the Ombudsman [HIM]  
5 within a reasonable specified time of any action taken on the [HIS]  
6 recommendation.  
7

8 (AO No. 77-94)  
9

10 **2.60.145 - Confidentiality.** {New Code Section adapted from AMCR 2.60}  
11

- 12 A. Disclosure of the names of complainants and witnesses may be made only if  
13 disclosure is necessary to facilitate investigation of a complaint, or with  
14 consent of the complainant or witness.  
15
- 16 B. Records provided to the Ombudsman which are accorded confidential or  
17 privileged status under municipal, state or federal law shall not be disclosed  
18 by the Ombudsman.  
19

20 **2.60.150 - Notice to complainants.**  
21

22 The Ombudsman shall notify the complainant of the actions taken by the  
23 Ombudsman and the department within a reasonable time after the conclusion of the  
24 matter.  
25

26 (AO No. 77-94)  
27

28 **2.60.155 - Notice to the public** [CITIZENS].  
29

- 30 A. The Ombudsman shall provide [POST] printed notices and [USE] other  
31 appropriate signage [MEANS] to inform the public [CITIZENS] of [THEIR] rights and  
32 protections under this chapter. [SECTIONS 2.60.010—2.60.180. The operating  
33 agents of all buildings owned or leased by the Municipality or the School  
34 District will ensure the Ombudsman's [THESE] notices are [SHALL BE] posted in  
35 public areas of all buildings under the control of [OWNED OR LEASED BY] the  
36 municipality or the School District. Nothing in this section is to be construed as  
37 repealing any other provisions of contract, ordinance or law.  
38
- 39 B. The Ombudsman may use social media and electronic notices.  
40

41 (AO No. 92-106)  
42

43 **2.60.160 - Reports.**  
44

45 The Ombudsman shall submit to the Assembly and the School Board a report on the  
46 [OF HIS] activities of the Ombudsman's office at least once a year.  
47

48 (AO No. 77-94)

**2.60.165 – Grievance against the Ombudsman. {New Code Section adapted from AMCR 2.60}**

- A. Grounds for grievance against the Ombudsman are:
1. Objection to a decision to decline or discontinue a review or investigation;
  2. An allegation of undue delay in the review or investigation of a complaint;
  3. A specification of error or omission in the review or investigation of a complaint; or
  4. An allegation of discourteous behavior by a member of the staff of the Ombudsman's office during the course of an investigation.
- B. Any person may file a grievance against the Ombudsman under this section within 45 days of the Ombudsman declining, discontinuing or closing a review or investigation. The grievance must be filed in writing to the Ombudsman, stating the grounds for grievance, and identifying specifics of the aggrieved person's concerns.
- C. The Ombudsman will respond in writing to the aggrieved person within 15 days after receipt of the grievance. If the information necessary to respond to the grievance is not readily available to the Ombudsman, the period for response may be extended in 15-day intervals at the discretion of the Ombudsman. Notice of any extension and the supporting reason(s) shall be provided in writing to the aggrieved person.
- D. A copy of the grievance and the Ombudsman's response will be maintained for five years in a file that is open to public inspection. The Ombudsman's annual report to the Assembly for the year in which the grievance was filed will include reference to the grievance.
- E. When a grievance is received which involves a complaint that is under current review or investigation, or reveals confidential or privileged information, the grievance and response will be available for public inspection only after the review or investigation is completed, and confidential information has been expunged.

**2.60.170 - Misconduct by municipal personnel.**

If the Ombudsman believes there is a breach of duty or misconduct by an officer or employee of the municipality, the Ombudsman may [SHALL] refer the matter to the appropriate department head, to the Mayor, to the Board of Ethics, or, when appropriate, to the Municipal Prosecutor, District Attorney, [GRAND JURY] or any other agency.

(AO No. 77-94)







**MUNICIPALITY OF ANCHORAGE  
ASSEMBLY MEMORANDUM**

No. AM 183-2017

Meeting Date: February 28, 2017

1 **From: Chair Gray-Jackson**

2  
3 **Subject: AO 2017 – AN ORDINANCE OF THE ANCHORAGE MUNICIPAL**  
4 **ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE**  
5 **CHAPTERS 2.20 AND 2.60 TO UPDATE PROVISIONS FOR THE**  
6 **ASSEMBLY COUNSEL’S OFFICE, THE ASSEMBLY PROGRAM**  
7 **AND BUDGET ANALYST, THE MUNICIPAL AUDIT COMMITTEE,**  
8 **AND THE OFFICE OF THE OMBUDSMAN; AND TO REPEAL**  
9 **REGULATION 2.60 OF THE ANCHORAGE MUNICIPAL CODE OF**  
10 **REGULATIONS (AMCR).**

11  
12 The Assembly Leadership tasked Assembly Department division staff with reviewing  
13 Title 2 of the Anchorage Municipal Code, providing for operation of the Legislative  
14 Branch of municipal government, for update and revision. The present effort has  
15 been ongoing since 2016 and Assembly staff and Assembly Members have met and  
16 worked on revisions in several chapters of Title 2.

17  
18 The revisions in Anchorage Municipal Code Chapters 2.20 and 2.60 providing for  
19 Assembly Counsel, the Assembly Program and Budget Analyst, the Municipal Audit  
20 Committee, and the Office of the Ombudsman are ready for submission to the  
21 Anchorage Assembly.

22  
23 In the case of AMC Chapter 2.60, the bulk of the Ombudsman’s code provisions date  
24 back to 1977, and were supplemented more than 20 years ago in the Anchorage  
25 Code of Regulations (AMCR). Ongoing efforts throughout the Municipality in the  
26 interim years have moved away from the AMCR to integrate all operative municipal  
27 law provisions into the Anchorage Municipal Code (AMC). The proposed changes to  
28 the Ombudsman code provide clarity and reflect former code and regulations in an  
29 integrated chapter of AMC Title 2. Regulation 2.60 of the AMCR may now be  
30 repealed.

31  
32 Additional provisions of the Title 2 Rewrite Project will be coming before the  
33 Assembly in the next month.

34  
35 Respectfully submitted:

36  
37 Elvi Gray-Jackson  
38 Chair

**TITLE 2 - LEGISLATIVE BRANCH**

**Regulation 2.60 - OFFICE OF THE OMBUDSMAN**

**2.60.001 - Complaints.**

A. Any person may contact the ombudsman by phone, letter, fax or in person. If information or referral assists the person with solving a problem, that information will be provided. (See Exhibit 1 which is on file in the municipal clerk's office.)

B. When possible, complaints will be informally resolved through discussion with the complainant, review of agency action and consultation with both sides. If no basis for the complaint is discovered upon preliminary review, the complaint will be closed.

C. The ombudsman will review and investigate complaints substantially in order of the date received. When the resources of the office do not allow review of all complaints within a reasonable time, the ombudsman may prioritize reviews according to, but not limited to, the following considerations:

1. Complaints of an emergency nature requiring immediate review to prevent serious harm;
2. Complaints involving time constraints, such as pending administrative or legislative action or public hearings;
3. Complaints involving recurring systematic prejudice, harm or disadvantage as the result of administrative action or decision.

(AR No. 94-76, § 1(2.60.001), 5-3-94)

Authority— Anchorage Municipal Code 3.40, 2.60.120.F; AO No. 77-94.

**2.60.002 - Exclusion to review or investigation.**

A. In addition to the specific jurisdictional exclusions in Anchorage Municipal Code sections 2.60.110.D and 2.60.110.A and B, the ombudsman may cease review or investigation of a complaint when the ombudsman determines that:

1. The administrative decision complained about may be more appropriately resolved by hearing or appeal for which the complainant may make timely application;
2. The complaint relates to an action which the complainant has known about for more than a year before filing the complaint; or
3. The complaint involves the grievance of an employee covered by a collective bargaining agreement, if the agreement provides a method for settling disputes arising under the agreement.

B. The ombudsman will, in her or his discretion, decline to investigate a complaint when:

1. The complainant has not given the agency an opportunity to resolve the complaint;
2. Disclosure of the complainant's identity is necessary to enable investigation of the complaint and the complainant refuses to allow such disclosure;
3. It appears an applicable law or administrative procedure provided an adequate remedy which the complainant did not pursue, with no reasonable justification for the failure to do so;
4. The complaint is presented anonymously and the ombudsman declines to initiate investigation on her or his own motion under Anchorage Municipal Code section 2.26.110.B;
5. The subject of the complaint was recently investigated, the complaint presents no new issue and the ombudsman believes that further investigation would not advance the interests of the complainant or a significant public interest;
6. The information provided by the complainant provides no specific or credible evidence to indicate an investigation is warranted; or
7. The complainant has no interest in the result of the investigation other than that of a member of the general public.

(AR No. 94-76, § 1(2.60.002), 5-3-94)

Authority— Anchorage Municipal Code 3.40, 2.60.120.F; AO No. 77-94.

### **2.60.003 - Investigations.**

A. At the discretion of the ombudsman, a complaint may be formally investigated to obtain information sufficient to allow a determination on the merits of the complaint. (See Exhibit 1 which is on file in the municipal clerk's office.)

B. Ombudsman staff may interview the complainant and agency employees and officials, review files and documents from the agency or other sources, research ordinances, statutes, regulations, practices or procedures and utilize any comparable information to assist in the determination.

C. The ombudsman may examine, under oath, persons believed to have information relevant to the investigation. Testimony or production of documents may be compelled by subpoena.

D. Notice of investigation, including an allegation stating the complaint in general terms using the standard from Anchorage Municipal Code section 2.60.110.C by which the action will be evaluated, will be provided to the agency or person against whom a complaint is made. Written notice is preferable.

E. If during the course of an investigation, information is exchanged which leads to satisfactory resolution for the complainant, the investigation may be discontinued.

F. A preliminary investigation report containing proposed findings and recommendations may be presented to the agency at the termination of the investigation. Consultation is required by Anchorage Municipal Code section 2.60.140.C, when the report is critical of an agency. The preliminary report will be distributed as a draft report to agency personnel designated by the ombudsman. The report may be modified, at the discretion of the ombudsman, if additional information is provided by the agency or modifications are requested.

G. The ombudsman will, in her or his discretion, make a finding that based on the evidence obtained during the investigation, the complaint or allegation is:

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

H. When the ombudsman presents findings or recommendations to an agency, official or employee, seeking resolution to a complaint, the agency will accept the findings and recommendations or request modifications and notify the ombudsman of any action taken on the recommendations within 30 days.

I. The final investigation report is a public document and may be noticed to the public by an assembly information memorandum. The final investigation report will be distributed to the complainant and appropriate government officials.

J. A report on the status of a complaint under investigation will be provided to a complainant at 60-day intervals after notice of investigation until the investigation is completed. A status report will be provided in response to a complainant request at any time.

(AR No. 94-76, § 1(2.60.003), 5-3-94)

Authority— Anchorage Municipal Code 3.40, 2.60. 120.F; AO No. 77-94; AO No. 77-144.

**2.60.004 - Confidentiality.**

- A. The names of complainants and witnesses may only be revealed when disclosure is necessary to facilitate investigation of a complaint.
- B. Records or documents provided to the ombudsman which are accorded confidential or privileged status under municipal, state or federal law shall not be disclosed.
- C. Denial of a request for access to information which is in the custody of the ombudsman will be automatically appealed to the assembly if the request involves information related to a complaint about the municipality, or to the school board if the request involves information related to a complaint about the Anchorage school district.

(AR No. 94-76, § 1(2.60.004), 5-3-94)

Authority— Anchorage Municipal Code 2.60.120.F, 3.40, 3.90.060.B; AO No. 77-94; AO No. 92-20.

**2.60.005 - Conflicts of interest.**

- A. If, during the review or investigation of a complaint, the ombudsman determines that response by the ombudsman or ombudsman staff involves a conflict of interest or may have the appearance of a conflict of interest, the ombudsman will promptly transfer the complaint to another staff member.
- B. The ombudsman may, in her or his discretion, review and present findings and recommendations for a complaint transferred under this section. Any conflict or appearance of a conflict of interest of the ombudsman will be disclosed to the agency and the complainant.

(AR No. 94-76, § 1(2.60.005), 5-3-94)

Authority— Anchorage Municipal Code 2.60.120.F, 3.40; AO No. 77-94.

**2.60.006 - Grievances against the ombudsman.**

- A. Any person may file a grievance against the ombudsman. The grievance must be filed in writing to the ombudsman and may include:
  - 1. The grievant's objection to a decision to decline or discontinue a review or investigation;
  - 2. An allegation of undue delay in the review or investigation of a complaint;
  - 3. A specification of error or omission in the review or investigation of a complaint; or
  - 4. An allegation of discourteous behavior by a member of the staff of the ombudsman's office during the course of an investigation.

B. The ombudsman will respond in writing to the grievant within 15 days after receipt of the grievance. If the information necessary to respond to the grievance is not readily available to the ombudsman, the period for response may be extended in 15-day intervals at the discretion of the ombudsman. Notice of any extension and the reasons for it shall be provided in writing to the grievant.

C. A copy of the grievance and the ombudsman's response will be maintained for five years in a file that is open to public inspection and will be disclosed to the assembly upon request.

D. When a grievance is received which involves a complaint that is under review or investigation or reveals confidential or privileged information, the grievance and response will be available for public inspection after the review or investigation is completed and confidential information is expunged.

(AR No. 94-76, § 1(2.60.006), 5-3-94)

Authority— Anchorage Municipal Code 2.60.120.F, 3.40; AO No. 77-94.

### **2.60.007 - Definitions.**

A. *Allegation* means a statement describing the complaint about an administrative act which is to be investigated.

B. *Complaint* means the problem or concern presented to the ombudsman.

C. *Complainant* means the person who presents a complaint to the ombudsman.

D. *Critical* means a finding which is justified or partially justified or a recommendation which requests remedial action by an agency.

E. *Finding* means the determination made by the ombudsman about an allegation.

F. *Grievance* means a complaint against the ombudsman or a member of the ombudsman's staff.

G. *Investigation* means a formal inquiry about a complaint and will result in notice of an allegation(s), a written report detailing the evidence considered, finding(s) and recommendation(s) made to the agency by the ombudsman and the agency's response.

H. *Recommendation* means the action proposed to the agency by the ombudsman intended to resolve the complainant's concern, as well as those of all citizens who may be similarly impacted and to promote higher standards of competency, efficiency and equity in the provision of municipal and school district services.

I. *Standard* means the criterion by which an agency's actions will be evaluated as established in Anchorage Municipal Code section 2.60.110.C.

(AR No. 94-76, § 1(2.60.007), 5-3-94)

Authority— Anchorage Municipal Code 2.60.120.F, 3.40; AO No. 77-94.