ANCHORAGE, ALASKA
AO No. 2024-25

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 2.60 TO UPDATE PROVISIONS FOR THE OFFICE OF THE OMBUDSMAN TO PROVIDE CLEAR AUTHORITY TO INVESTIGATE COMPLAINTS WITHIN THE OMBUDSMAN’S JURISDICTION AS ARTICULATED IN CHARTER.

WHEREAS, the Anchorage Municipal Charter guarantees the people the “right to the assistance of a municipal ombudsman in dealing with grievances and abuses”;

and

WHEREAS, the jurisdiction of the Ombudsman includes the “acts and omissions of employees and agents of the school district, as well as employees and agents of the municipality”;

and

WHEREAS, while the provisions of Code governing the ombudsman may properly prescribe the office’s “term, powers and duties,” it in no way can be construed as placing limits upon their jurisdiction; and

WHEREAS, the Administration has historically recognized the critical importance of the Office of the Ombudsman as a means of addressing matters of public concern and, through a Mayor’s directive adopting a written policy and procedure as far back as 1997 explicitly instructing municipal employees to report matters of public concern to the Ombudsman particularly if they fear reprisal for doing so; and

WHEREAS, the Charter’s intent was to create an office “independent from the Mayor and . . . protected from the legislative body” to ensure the office could be more objective and free from influence from either branch of government; and

WHEREAS, the people’s right to the assistance of the Ombudsman can only be ensured so long as the Ombudsman’s independence and freedom from outside influence is preserved; now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code section 2.60.020 is hereby amended to read as follows (the remainder of the section is not affected and therefore not set out):

2.60.020 Definitions.

1 Anchorage Municipal Charter, Article II, Section (6).
2 Id. at §4.07.
3 Id.
4 See Policy and Procedure 40-14 (April 8, 1997).
5 Transcript of Anchorage Charter Commission Meeting, Pg. 57 (702) (March 27, 1975).
The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Administrative act** means an action, omission, decision, recommendation, practice, policy, or procedure done or adopted by an agent of the municipality on its behalf, within the scope of employment or under the apparent authority of a municipal body, office, or individual.

(AO No. 77-94; AO No. 89-45; AO No. 92-20; AO No. 2017-40 , § 4, 3-21-17)

### Section 2.

Anchorage Municipal Code section 2.60.110 is hereby amended to read as follows:

#### 2.60.110 Jurisdiction.

A. The ombudsman may investigate the administrative acts of **employees** and **agents** of the municipality.

B. The ombudsman may investigate the administrative act of an **employee** or **agent** of the municipality on the ombudsman's own motion if the ombudsman reasonably believes that it is an appropriate subject for review.

C. An appropriate subject for investigation by the ombudsman is an administrative act which the ombudsman has reason to believe might be:

1. Contrary to law;
2. Unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, **an abuse of authority**, 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; or
8. A matter of public concern which has failed to be or could not be addressed by other means.
D. The ombudsman shall be barred from inquiry into acts of the Mayor, the assembly or the school board.

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; AO No. 2017-40 , § 4, 3-21-17)

**Section 3.** Anchorage Municipal Code section 2.60.125 is hereby amended to read as follows:

### 2.60.125 Decline of jurisdiction; cease investigation.

A. The ombudsman may decline review and investigation, or cease investigation of a complaint, when the ombudsman determines any of the following in writing:

1. The agency action 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;

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.

4. The resources of the ombudsman's office are insufficient for adequate investigation.

5. The matter has been brought to the courts for resolution or is the subject of a criminal investigation or prosecution, and the ombudsman determines that investigation is not in best interests of the municipality.

B. The ombudsman shall decline to review or investigate, and shall cease investigation, upon written determination by the ombudsman that any of the following factors apply:

1. The ombudsman lacks jurisdiction;

2. The complainant has not given the agency an opportunity to resolve the complaint;

3. Disclosure of the complainant's identity is necessary to enable investigation of the complaint and the complainant refuses to allow such disclosure;

4. 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;

5. The complaint is presented anonymously and the ombudsman does not initiate investigation on the ombudsman’s own motion;

6. 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;

7. The information provided by the complainant provides no specific or credible evidence to indicate an investigation is warranted; or

8. The complainant has no tangible personal stake in the outcome and the investigation would not advance a significant public interest.[;]

9. THE MATTER HAS BEEN BROUGHT TO THE COURTS FOR RESOLUTION OR IS IN LITIGATION.]

(AO No. 2017-40, § 4, 3-21-17)

Section 4. Anchorage Municipal Code section 2.60.165 is hereby amended to read as follows:

2.60.165 Grievance against the ombudsman.

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.

F. To the fullest extent provided by state law, a civil action for damages may not be brought against the municipality, ombudsman, or a member of the ombudsman’s staff based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty by the office of the ombudsman.

G. Notwithstanding section 1.50.010, the municipality shall defend, indemnify, and hold harmless the ombudsman and the ombudsman’s staff in an individual capacity against any claim filed in a civil or administrative action based upon any conduct, act or omission of the ombudsman’s office. The municipality may only decline indemnification of the ombudsman upon concurrence of both the risk manager and the assembly counsel.

(AO No. 2017-40, § 4, 3-21-17; AO No. 2023-27 , § 1, 3-21-23)

Section 5. This ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this _______ day of _______________, 2024.

Chair

ATTEST:

Municipal Clerk
The proposed ordinance makes several changes to the Anchorage Municipal Code to clarify the independence and authority of the Ombudsman as established in the municipal charter.

Specifically:

- Amending the definition of “administrative act” in section 2.60.020 to clarify that it is not limited to the formal acts and policies of Municipal agencies, but rather any act or omission done by any employee, agent, or agency of the municipality under its apparent authority. This amendment is in keeping with the jurisdiction of the ombudsman as established with broad language in Charter to investigate the “acts and omissions of employees and agents of the school district, as well as employees and agents of the municipality.”

- Amending section 2.60.110 to bring unity to the Code, Charter and the Administration’s Policies & Procedures. Specifically, the proposed ordinance amends the Ombudsman’s jurisdiction to investigate both “employees and agents” to mirror the language of the charter. Additionally, the proposed ordinance clarifies that the Ombudsman has authority to investigate abuses of authority as well as any other matters of public concern which have failed to be addressed through other means. This change is intended to align this particular section of Code and P&P 40-14, which instructs Municipal employees specifically to report any matter of public concern to the Ombudsman.

- Amending section 2.60.125 to allow the Ombudsman to investigate matters that may be involved in litigation, at their discretion. The provision of code forbidding the Ombudsman from investigating matters “brought to the court for resolution or in litigation” (subsection 2.60.125B.9) is a relatively new limitation which was placed on the Ombudsman’s office in 2017. The ordinance that introduced this language, AO 2017-40, was a large AO that was part of an even larger effort by the Assembly to overhaul Title 2. This particular portion was designed to bring all of the rules governing the Ombudsman’s office (both in code and regulation) in one place. However, the prohibition on the Ombudsman investigating matters that were the subject of litigation existed nowhere previously. This change was introduced
at the request of the Ombudsman and was intended to be placed in
subsection 2.60.125A. The request was made so that the Ombudsman would
have the discretion to decline investigation of matters that may be the subject
of a criminal prosecution or instances where a complainant may have already
sought relief through the courts. It was not intended to forbid investigation of
any matter that may be tangentially involved in some other matter pending
litigation. This change brings the code into closer alignment with the
Ombudsman’s original request and removes an artificially imposed limitation
on the people’s right to the assistance of the Ombudsman.

- Amending section 2.60.165 to address concerns raised by the department of
law regarding the Ombudsman’s immunity to civil suit under AS 09.65.070(d)
by tying the language of this section of code closer to the language of the
Alaska statute. Further the proposed AO adds a new subsection intended to
further solidify the independence of the Ombudsman’s office by indemnifying
it by code, as opposed to leaving the decision at the discretion of the Risk
Manager.

I request your support for the ordinance.

Prepared by: Assembly Counsel’s Office

Respectfully submitted: Christopher Constant, Assembly Chair
District 1 - North Anchorage