

Submitted by: Assembly Chair Constant
Reviewed by: Assembly Counsel's Office
(S) For reading: July 30, 2024

**ANCHORAGE, ALASKA
AO No. 2024-67(S)**

1 **AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING**
2 **ANCHORAGE MUNICIPAL CODE SECTIONS 4.50.110 AND 11.50.035 TO**
3 **REAUTHORIZE THE DESIGN ADVISORY BOARD FOR THE PORT OF ALASKA**
4 **MODERNIZATION PROGRAM BEYOND 2024; MODIFY THE BOARD**
5 **COMPOSITION, STRUCTURE, AND SCOPE [OF OVERSIGHT]; AND RENAME**
6 **THE BOARD ACCORDINGLY.**
7

8
9 **WHEREAS**, in the recent annual ordinance to reauthorize boards and commissions
10 for an additional three years, AO 2023-69, As Amended, the Anchorage Assembly
11 reauthorized the Port of Alaska Modernization Program and Design Advisory Board
12 (PDAB) for only one year, to October 14, 2024, in order to review its functionality
13 and propose changes before then; and
14

15 **WHEREAS**, the work of the PDAB is necessary to continue as the Port of Alaska
16 Modernization Program project will take several more years to complete; and
17

18 **WHEREAS**, the design work of the Port of Alaska Modernization Project is nearing
19 completion, the construction process is still in early phases and will continue for
20 many years to come; and
21

22 **WHEREAS**, the design process continues to require oversight by the Design
23 Advisory Board, the construction process has the most potential for cost control and
24 construction management issues that may impact the cost of the overall project
25 greatly; and
26

27 **WHEREAS**, the PDAB has an unusual structure and composition, with the Port
28 administration having more weight and influence on all PDAB activities and votes
29 than other technical advisory boards or commissions in the Municipality of
30 Anchorage; and
31

32 **WHEREAS, the PDAB and its members are indemnified and protected from**
33 **liability and legal defense costs in carrying out their official duties by**
34 **Anchorage Municipal Code subsection 1.50.010B. and by commonlaw**
35 **jurisprudence; and**
36

37 **WHEREAS**, the stakeholders involved in the current Design Advisory Board and the
38 members added through this ordinance are best suited to **advise on****ensure** cost
39 containment **strategies**, project fidelity, and effective program delivery since they
40 are directly involved in the day to day operations of the Port, and as such the PDAB
41 provides an appropriate forum to track construction progress, sequencing, and
42 forecasting, and to receive reports of changes or disruptions; and
43

1 **WHEREAS**, the Assembly desires to reauthorize the PDAB on track with its three-
 2 year cycle, while restructuring and renaming it, and balancing its composition with
 3 additional members and revised roles; now, therefore
 4

5 **THE ANCHORAGE ASSEMBLY ORDAINS:**

6 ***[NOTE: Code amendments by AO 2023-81, passed and approved January 9,***
 7 ***2024, renaming to the “Don Young Port of Alaska” were inadvertently not***
 8 ***included in the original AO version, but are included in the (S) version text***
 9 ***herein, without legislative drafting markup.]***

10
 11 **Section 1.** Anchorage Municipal Code section 4.50.110 is hereby amended to
 12 read as follows (*the remainder of the section is not affected and therefore not set*
 13 *out*):
 14

15 **4.50.110 Don Young Port of Alaska Modernization Program [DESIGN**
 16 **AND CONSTRUCTION] Advisory Board.**

17
 18 *** *** ***

19 B. This board shall terminate on October 14, 2026 [2024], unless
 20 affirmatively continued by the assembly in accordance with section
 21 4.05.150.
 22

23 (AO No. 2020-81 , § 1, 8-27-20)
 24

25 **Section 2.** Anchorage Municipal Code section 11.50.035 is hereby amended to
 26 read as follows (*the remainder of the section is not affected and therefore not set*
 27 *out*):
 28

29 **11.50.035 Don Young Port of Alaska Modernization Program [AND**
 30 **DESIGN and Construction] Advisory Board.**

31 *** *** ***

32 B. *Membership.* The Don Young Port of Alaska Modernization Program
 33 [PAMP-DESIGN] [~~and Construction~~] Advisory Board (PAB) shall
 34 consist of six [seven] [FIVE] voting members. Members of the board
 35 shall be appointed by the mayor and confirmed by the assembly. The
 36 port director shall provide or designate staff support for PAB [THE
 37 BOARD].
 38

39 1. The six [seven] [FIVE] voting members of the board shall
 40 include:

41 a. ~~[A member who is an employee or representative of~~
 42 ~~a port tenant or operator other than of the primary~~
 43 ~~Lift On Lift Off Operator (LOLO) or the primary Roll~~
 44 ~~On Roll Off (RORO) Operator]~~ [THE DIRECTOR OF
 45 THE PORT OF ALASKA, OR THE DIRECTOR'S
 46 DESIGNEE].

47 **[B.]** The municipal manager or designee [A MEMBER
 48 SELECTED BY THE MAYOR]. Upon a new mayor being
 49 seated, this position shall be deemed vacant until the
 50 Manager is confirmed.

- 1 **b [C].** A member nominated by the primary LOLO operator
 2 [MATSON].
 3 **c [D].** A member nominated by the primary RORO operator
 4 [TOTE].
 5 **d.** **A member representing a cement user, nominated**
 6 **by the Port of Alaska User's Group.**
 7 e. A member representing a petroleum user, nominated by
 8 the Port of Alaska User's Group.
 9 **f.** **One [Two] member[s] nominated by the building trades**
 10 **council[, each from a different discipline,] that has[ve]**
 11 **substantial experience implementing and supervising**
 12 **port construction.**
 13
 14 2. Notwithstanding the qualifications of board and commission
 15 members set out in subsections 4.05.035A. and B., up to two
 16 members of the board may be Alaskan citizens who are not
 17 residents of the municipality.
 18
 19 C. *Meetings and procedures of the board* are as follows:
 20 1. **PAB [THE BOARD]** shall meet as often as determined
 21 necessary by the board, and not less than twice a year.
 22 2. The Don Young Port of Alaska will provide project updates as
 23 needed to the board, but not less than quarterly.
 24 3. A majority of seats of **PAB [THE BOARD]** shall constitute a
 25 quorum.
 26 4. An affirmative vote of a simple majority of the full **PAB [THE**
 27 **BOARD]** is required to approve any substantive motion or
 28 measure.
 29 5. The Director of the Don Young Port of Alaska or designee shall
 30 serve as an ex officio nonvoting member [CHAIR OF] PAB
 31 **[THE BOARD]** and shall serve as secretary to PAB [the
 32 **board].**
 33
 34 D. *Purpose and duties; ~~[basis-of-design documents and construction~~*
 35 *~~process oversight.]~~ The **PAB [PAMP-Design Advisory Board]** shall
 36 **review and provide input on design concepts [develop and**
 37 **recommend for adoption basis-of-design documents]** for future cargo
 38 and fuels infrastructure; **receive reports on [, and have oversight of**
 39 **the] construction process plans, progress, and project financing, and**
 40 **changes to them; and provide feedback on such reports as the board**
 41 **deems appropriate.**
 42 1. *Recommendation of design concepts [basis-of-design*
 43 *documents] and dispute resolution to the mayor. **PAB [THE***
 44 ***BOARD]** is advisory to the mayor and assembly.
 45 a. **PAB [THE BOARD]** shall advise the mayor to propose for
 46 adoption by the assembly design criteria **[IN recommended**
 47 **BASIS-OF-DESIGN DOCUMENTS]** to govern additional cargo
 48 and fuels infrastructure at the Port of Alaska.
 49 b. The port director will submit to the **PAB [BOARD]** for
 50 **notification [REVIEW]** any changes that **[MEANINGFULLY]**
 51 **impact users' operations, or impact project costs by the lesser of****

\$2,000,000.00 or five percent of the specific [OVERALL] project costs.

c. When [IF] a **board report** [RECOMMENDED DOCUMENT] is **not approved by a unanimous** [NOT RECOMMENDED ON A UNANIMOUS] vote of **PAB**[~~the board~~], any member not **agreeing with** [VOTING IN FAVOR OF] the **vote**[RECOMMENDED DOCUMENT] may transmit **a minority letter expressing their perspective** to the mayor and assembly [A MINORITY REPORT].

d. If a **recommendation** [~~recommended document~~] receives approval by **PAB** [~~the board~~], the mayor shall submit a memorandum to the assembly and the port director shall present it at a meeting of the assembly's committee that oversees the port as soon as practicable.

2. *Assembly review and approval* [OF BASIS-OF-DESIGN DOCUMENTS]

a. *Administration review and assembly submission.* Not more than 60 days after receiving from **PAB** [THE BOARD] a recommended basis-of-design document, the mayor shall submit a proposed basis-of-design document for assembly review and approval. The mayor shall also submit contemporaneously an information memorandum with the original document proposed by **PAB** [THE BOARD], and any [ACCOMPANYING] **letters** [MINORITY REPORTS]. To the extent that the basis-of-design document proposed by the mayor differs in any material aspect from the document proposed to the mayor by **PAB** [THE BOARD], the mayor shall describe for the assembly the considerations that led the mayor to depart from **PAB's** [THE BOARD's] recommendation.

b. *Assembly approval.* After receiving a proposed basis-of-design document from the mayor, the assembly shall review and hold a public hearing; except when the board unanimously approves a recommendation no public hearing is required **unless a public hearing is required by some other code section.** The assembly may approve the **design concept** [BASIS-OF-DESIGN DOCUMENT NARRATIVE] with such changes as it deems necessary or advisable, in the best public interest.

3. Construction and financing. **PAB** [~~process plans and oversight. The Board~~] shall also receive from the port director regular reports of **financing**; the construction process forecasting, planning, and sequencing; any disruptions or shortfalls in such plans; and of **proposed change orders to approved construction plans.**

a. The port director shall submit for **PAB's** [~~the board's~~] **review and information**

i. annually: a PAMP status report to include an overview of each project in the Plan, including the plan of finance, and its status.

ii. quarterly: a construction process report to include the progress for each project and its phases, projected

financing needs, and changes in sequencing or timing from previous reports.

iii. When received as soon as practicable: a summary of any change order to approved construction plans; any unanticipated project disruptions that require stop work; and any emergency situation that significantly impacts the PAMP construction progress.

b. PAB[The Board] may provide commentary or make recommendations to the port director, mayor or assembly regarding any of the construction process plan information and reports described in this subsection D.3. Any board member who does not support PAB’s commentary or recommendation on a particular matter may issue a separate letter to the port director, mayor or assembly.

c. The port director shall provide to the assembly’s committee that oversees the port as soon as practicable a copy of reports and recommendations described in this subsection D.3.

(AO No. 2020-81 , § 2, 8-27-20; AO No. 2023-69, § 1, 10-10-23)

Section 3. 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

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MUNICIPALITY OF ANCHORAGE ASSEMBLY MEMORANDUM

No. AM 611-2024

Meeting Date: July 30, 2024

1 **From: Assembly Chair Constant**

2
3 **Subject: AO 2024-67(S) - AN ORDINANCE OF THE ANCHORAGE**
4 **MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL**
5 **CODE SECTIONS 4.50.110 AND 11.50.035 TO REAUTHORIZE THE**
6 **DESIGN ADVISORY BOARD FOR THE PORT OF ALASKA**
7 **MODERNIZATION PROGRAM BEYOND 2024; MODIFY THE**
8 **BOARD COMPOSITION, STRUCTURE, AND SCOPE [OF**
9 **OVERSIGHT]; AND RENAME THE BOARD ACCORDINGLY.**

10
11
12 The (S) version of the proposed ordinance makes several changes, the significant
13 ones are:

- 14
15 • Renames the board to the “Don Young Port of Alaska Modernization Program
16 Advisory Board (PAB).” The name is broad and not limited to basis of design
17 only.
- 18 • Lowers the total membership from 7 to 6 members (current code has 5
19 members). While an even number of seats is unusual, it does occur and only
20 means that in case of tie votes on a motion, it fails.
- 21 • Changes the Board seat designated for a port tenant or operator other than
22 a Lift On/Lift Off or Roll On/Roll Off operator to a representative of a cement
23 user, nominated by the User’s Group. This is selected similarly to the
24 petroleum user seat.
- 25 • Changes seats for a member nominated by the building trades council from
26 2 to 1. The unspecified 7th seat for the PAB can be from any user, operator,
27 or construction discipline, and nominated by the Port User’s Group.
- 28 • The Purpose and Duties subsection is revised to:
 - 29 ○ Change “basis-of-design documents” to “design concepts.”
 - 30 ○ Changes the “minority report” to a “minority letter” and allows for any
31 PAB member to send a minority letter regarding the Board’s action on
32 construction or financing with which the member disagrees.
 - 33 ○ Other semantic and grammatical changes for clarity.

34
35 The most substantial changes from the current Code in the original proposed
36 ordinance are preserved in the (S) version.

37
38 Additionally, since the introduction of the original proposed ordinance, there have
39 been questions and concerns about liability of the PAB or its individual members for
40 decisions and recommendations it provides. Assembly Counsel advises that as an
41 “advisory only” board, it will not incur liability: any liability claims would have to be
42 based on final decisions by public officials in any Port design or construction
43 matters-the Port Director, Mayor or Assembly-and the proper party for liability claims

1 is the Municipality of Anchorage. The PAB members, by participating in the board,
2 are not producing the designs and affixing their professional seal, nor by
3 participating in the board and voting are they Moreover, indemnification for those
4 public officials and employees, and any board or commission member, is provided
5 for by enacted law AS 09.65.070(d)(1) and (2), and at Anchorage Municipal Code
6 subsection 1.50.010B., when such person's conduct is "within the scope of the
7 official duties of the official, assembly member, board member, or commissioner."
8 Although there are limitations to this liability protection set forth in AMC subsection
9 1.50.010C., including if a board member "engaged in gross negligence, willful,
10 malicious, dishonest, fraudulent or criminal conduct that forms any part of the factual
11 basis for, or that is related or relevant to, the claim," it is an extremely high bar to
12 meet to successfully impose personal liability, and particularly for a board that is
13 advisory only. Thus, the concerns for liability lack traction for any member that
14 faithfully participates in voting on advisory matters, and should not have any chilling
15 effect on participation.

16
17 **I request your support for the proposed (S) version of the ordinance.**

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19 Prepared by: Assembly Counsel's Office

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