

Submitted by: Assembly Chair Constant
Assembly Vice Chair Zaletel
Reviewed by: Assembly Counsel's Office
For reading: June 25, 2024

ANCHORAGE, ALASKA
AO No. 2024-67

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

13
14 **WHEREAS**, the work of the PDAB is necessary to continue as the Port of Alaska
15 Modernization Program project will take several more years to complete; and

16
17 **WHEREAS**, the design work of the Port of Alaska Modernization Project is nearing
18 completion, the construction process is still in early phases and will continue for
19 many years to come; and

20
21 **WHEREAS**, the design process continues to require oversight by the Design
22 Advisory Board, the construction process has the most potential for cost control and
23 construction management issues that may impact the cost of the overall project
24 greatly; and

25
26 **WHEREAS**, the PDAB has an unusual structure and composition, with the Port
27 administration having more weight and influence on all PDAB activities and votes
28 than other technical advisory boards or commissions in the Municipality of
29 Anchorage; and

30
31 **WHEREAS**, the stakeholders involved in the current Design Advisory Board and the
32 members added through this ordinance are best suited to ensure cost containment,
33 project fidelity, and effective program delivery since they are directly involved in the
34 day to day operations of the Port, and as such the PDAB provides an appropriate
35 forum to track construction progress, sequencing, and forecasting, and to receive
36 reports of changes or disruptions; and

37
38 **WHEREAS**, the Assembly desires to reauthorize the PDAB on track with its three-
39 year cycle, while restructuring and renaming it, and balancing its composition with
40 additional members and revised roles; now, therefore

41
42 **THE ANCHORAGE ASSEMBLY ORDAINS:**

1
2 **Section 1.** Anchorage Municipal Code section 4.50.110 is hereby amended to
3 read as follows (*the remainder of the section is not affected and therefore not set*
4 *out*):

5
6 **4.50.110 Port of Alaska Modernization Program Design and**
7 **Construction Advisory Board.**

8
9 *** *** ***

10 B. This board shall terminate on October 14, 2026 [2024], unless
11 affirmatively continued by the assembly in accordance with section
12 4.05.150.

13
14 (AO No. 2020-81 , § 1, 8-27-20)

15
16 **Section 2.** Anchorage Municipal Code section 11.50.035 is hereby amended to
17 read as follows (*the remainder of the section is not affected and therefore not set*
18 *out*):

19
20 **11.50.035 Port of Alaska Modernization Program and Design and**
21 **Construction Advisory Board.**

22 *** *** ***

23 B. *Membership.* The PAMP-Design and Construction Advisory Board shall
24 consist of seven [FIVE] voting members. Members of the board shall
25 be appointed by the mayor and confirmed by the assembly. The port
26 director shall provide or designate staff support for the board.

- 27
28 1. The seven [FIVE] voting members of the board shall include:
- 29 a. A member who is an employee or representative of a
30 port tenant or operator other than of the primary Lift On
31 Lift Off Operator (LOLO) or the primary Roll On Roll Off
32 (RORO) Operator [THE DIRECTOR OF THE PORT OF
33 ALASKA, OR THE DIRECTOR'S DESIGNEE].
 - 34 b. The municipal manager or designee [A MEMBER
35 SELECTED BY THE MAYOR]. Upon a new mayor
36 being seated, this position shall be deemed vacant until
37 the Manager is confirmed.
 - 38 c. A member nominated by the primary LOLO operator
39 [MATSON].
 - 40 d. A member nominated by the primary RORO operator
41 [TOTE].
 - 42 e. A member representing a petroleum user, nominated
43 by the Port of Alaska User's Group.
 - 44 f. Two members nominated by the building trades council,
45 each from a different discipline, that have substantial
46 experience implementing and supervising port
47 construction.

- 48
49 2. Notwithstanding the qualifications of board and commission
50 members set out in subsections 4.05.035A. and B., up to two

1 members of the board may be Alaskan citizens who are not
2 residents of the municipality.

3
4 C. *Meetings and procedures of the board* are as follows:

- 5 1. The board shall meet as often as determined necessary by
6 the board, and not less than twice a year.
7 2. The Port of Alaska will provide project updates as needed to
8 the board, but not less than quarterly.
9 3. A majority of seats of the board shall constitute a quorum.
10 4. An affirmative vote of a simple majority of the full board is
11 required to approve any substantive motion or measure.
12 5. The Director of the Port of Alaska or designee shall serve as
13 an ex officio nonvoting member [CHAIR OF] the board and and
14 shall serve as secretary to the board.
15

16 D. *Purpose and duties; basis-of-design documents and construction*
17 *process oversight*. The PAMP-Design Advisory Board shall develop and
18 recommend for adoption basis-of-design documents for future cargo and
19 fuels infrastructure, and have oversight of the construction process plans
20 and changes.

- 21 1. *Recommendation of basis-of-design documents and dispute*
22 *resolution to the mayor*. The board is advisory to the mayor and
23 assembly.
24 a. The board shall advise the mayor to propose for adoption by
25 the assembly design criteria in recommended basis-of-design
26 documents to govern additional cargo and fuels infrastructure at
27 the Port of Alaska.
28 b. The port director will submit to the board for review any
29 changes that [MEANINGFULLY] impact users' operations, or
30 impact project costs by the lesser of \$2,000,000.00 or five
31 percent of the specific [OVERALL] project costs.
32 c. When [IF] a recommended document is approved by a [NOT
33 RECOMMENDED ON A UNANIMOUS] vote of the board, any
34 member not voting in favor of the recommended document may
35 transmit to the mayor and assembly a minority report.
36 d. If a recommended document receives approval by the board, the
37 mayor shall submit a memorandum to the assembly and the port
38 director shall present it at a meeting of the assembly's committee
39 that oversees the port as soon as practicable.
40
41 2. *Assembly review and approval of basis-of-design documents*
42 a. *Administration review and assembly submission*. Not more than
43 60 days after receiving from the board a recommended basis-
44 of-design document, the mayor shall submit a proposed basis-
45 of-design document for assembly review and approval. The
46 mayor shall also submit contemporaneously an information
47 memorandum with the original document proposed by the
48 board, and any [ACCOMPANYING] minority reports. To the
49 extent that the basis-of-design document proposed by the
50 mayor differs in any material aspect from the document
51 to the mayor by the board, the mayor shall describe for the

assembly the considerations that led the mayor to depart from 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. The assembly may approve the basis-of-design document narrative with such changes as it deems necessary or advisable, in the best public interest.

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

- a. The port director shall submit for the board's review
 - 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. The Board may 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.
- 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.

ATTEST:

Chair

Municipal Clerk



**MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM**

No. AM 543-2024

Meeting Date: June 25, 2024

From: Assembly Chair Constant

Subject: AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS 4.50.110 AND 11.50.035 TO REAUTHORIZE THE DESIGN ADVISORY BOARD FOR THE PORT OF ALASKA MODERNIZATION PROGRAM BEYOND 2024; MODIFY THE BOARD COMPOSITION, STRUCTURE, AND SCOPE OF OVERSIGHT; AND RENAME THE BOARD ACCORDINGLY.

This proposed ordinance modifies the Port of Alaska Modernization Program Design Advisory Board (PDAB) in three distinct ways:

1. Reauthorizes the PDAB to continue to October 14, 2026. In AO 2023-69, As Amended, the ordinance reauthorizing several boards and commissions on the typical 3-year cycle after review by the Office of Internal Audit, the PDAB was only reauthorized for one year and currently will terminate October 14, 2024 absent Assembly action. I had asked for this shortened reauthorization period to provide time to propose the two changes described below.
2. Modifies the composition of the PDAB to be more equitable in its representation of stakeholders and Port users.
3. Expands the scope of the PDAB’s oversight to include regular reports of the PAMP construction process and sequencing plans, changes to those and status reports for projects underway and plans of finance, and of change orders to approved construction plans. Additionally, the Port Director is to report any unanticipated project disruptions requiring work to stop, or emergency situations that significantly impact construction progress.

PDAB Composition.

The PDAB is a technical advisory board listed in Anchorage Municipal Code Chapter 4.50, established in 2020. An unusual feature of the current composition of the PDAB is the Port Director, the head of the Municipal department the board is to advise, is also the Code designated chair of this board. The general rule for Municipal boards and commissions under AMC section 4.05.070 is that the seated members annually elect a chair and vice-chair to preside over their meetings, and the Municipal department that is aided or advised by the board or commission provides staff support to it for resources, logistics, and documenting or implementing the boards’ decisions. AMC section 4.05.140. The Port Commission, the other appointed board/commission for the port, does not specify any seat for a staff member or Port Director. AMC section 11.50.030.

It is not typical, but some other technical advisory boards have members whom are

1 Municipal staff. None of those in AMC Chapter 4.50, *Technical Advisory Boards*,
2 designate a department director as the chair, which includes: Bidding Review Board,
3 Budget Advisory Commission (Municipality and School District to provide staff),
4 Election Commission (Municipal Clerk to provide assistance), Geotechnical
5 Advisory Commission (Director of Planning is an ex officio member and serves as
6 secretary), On-site Wastewater System Technical Review Board (Director of
7 Community Development or designee is secretary to the board), and Anchorage
8 Regional Landfill Closure and Post-Closure Care Investment Fund Board (“ARL
9 Board”), AMC section 4.50.100 and AMC section 26.80.065B. The five-member
10 ARL Board includes at least one who is staff from the MOA’s Public Finance &
11 Investments Division, and at least one staff from the SWS. The Public Finance &
12 Investments Division is to provide administrative support and staff. The recently
13 enacted and formed MOA Trust Fund Board of Trustees, AMC section 4.40.170,
14 has a permanent seat for the Chief Fiscal Officer of the Municipality (AMC section
15 4.40.170B.2.a.) but is ineligible to serve as the chair of this board. (AMC section
16 4.40.170D.2.)
17

18 It seems the PDAB is unique in designating the chair of its board to be the Director
19 of the enterprise activity of department that it is also charged with advising. This
20 arrangement taints the advice and recommendations produced by the PDAB. This
21 proposed ordinance will restructure the composition so the Port Director continues
22 to provide expertise and staff support, but is not a voting board member, similar to
23 many other technical boards and commissions.
24

25 The general rule is a wiser approach, the PDAB composition, along with another
26 member selected by the Mayor with no other qualification, basically has a built-in
27 bias or predisposition to the Port Director’s preferences with the power of presiding
28 over meetings as well as the agenda content. A more independent chair elected by
29 the PDAB board members may more freely introduce issues and topics related to
30 suggested design concepts and candidly discuss and debate them. After all, the
31 Port Director is the chief administrator of the port, per AMC section 11.50.040B.1.
32 As an ex officio member, the Port Director would be able to fully participate
33 otherwise, including advising on technical matters and participating in debate and
34 discussion.
35

36 This proposed ordinance also adds two more members, who shall be employees or
37 representatives of the other Port users who do not have a designated seat like
38 Matson and TOTE do. There are six other such Port users. See
39 <https://www.portofalaska.com/business/stakeholders/>. Their representation and
40 participation will provide for more robust and well rounded discussion and advice.
41

42 **PDAB Scope of oversight.**

43 In addition, this ordinance changes the scope of its oversight functions and duties.
44 First, it proposes a change to delete the word “meaningfully” from AMC subsection
45 11.50.035D.1.b. That word is subjective and the Assembly would prefer a more
46 objective criteria: the Port Director should submit to the PDAB for its consideration
47 ANY changes to design criteria or basis-of-design documents that “impact users
48 operation, or impact project costs by the lesser of \$2,000,000.00 or five percent of
49 the overall project costs.” Nothing requires the PDAB to take up debate or

1 discussion of these, but they should be informed of every change that impacts Port
2 users' operations.

3
4 Finally, a significant change to the scope of the PDAB's oversight duties is the
5 addition of AMC subsection 11.50.035D.3. to require regular reports from the Port
6 Director on the construction process forecasting, planning, and sequencing; any
7 disruptions or shortfalls in such plans; summaries of change orders to approved
8 construction plans; and of any unanticipated project disruptions or emergencies that
9 affect the construction progress under way. The PDAB has an opportunity, but is
10 not required to, make any recommendations based on those reports to the Port
11 Director, Mayor or Assembly. Moreover, the Port Director is required to provide a
12 copy of these reports and recommendations to the Assembly's Enterprise and
13 Utilities Oversight Committee as soon as practicable.

14
15 These numerous changes are intended to provide a more meaningful and equitable
16 forum for the Port users to participate in oversight and recommendations of the
17 PAMP construction plans, in each of its phases and construction projects as they
18 are undertaken, modified, or disrupted. This change to the Code and PDAB is not
19 anticipated to have costs to the MOA exceeding \$30,000 so a summary of economic
20 effects is not included.

21
22 **I request your support for the proposed ordinance.**

23
24 Reviewed by: Assembly Counsel's Office

25
26 Respectfully submitted: Christopher Constant, Assembly Chair
27 District 1, North Anchorage



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6 **BOARD FOR THE PORT OF ALASKA MODERNIZATION**
7 **PROGRAM BEYOND 2024; MODIFY THE BOARD COMPOSITION,**
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27 Respectfully submitted: Christopher Constant, Assembly Chair
28 District 1, North Anchorage
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30 Meg Zaletel, Assembly Vice Chair
31 District 4, Midtown
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