

LAI-ON-THE-TABLE
MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM



No. AM XXX-2024

Meeting Date: March 27, 2024

From: Assembly Chair Constant

Subject: AO 2024-28 – AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS 3.20.070, 25.20.020, 25.30.020, 26.30.025, AND INSERTING A NEW SECTION 26.40.090 TO REQUIRE ASSEMBLY APPROVAL OF ACTIONS TO ACQUIRE OR DISPOSE OF PROPERTY RIGHTS TO WATER, MINERAL, WIND OR SOLAR RESOURCES, AND OF THE FISH AND WILDLIFE PROGRAM FOR THE EKLUTNA HYDROPOWER PROJECT AND RESTORATION OF CONTINUOUS WATER FLOWS TO THE EKLUNTA RIVER.

The proposed Ordinance is submitted in response to the apparent effort by the Eklutna Owners group to incur financial obligations and dispose of Municipal resources and assets without the approval of or any formal consultation with the Assembly. That is in derogation to the Assembly’s legislative powers; it has sole authority to obligate Municipal revenues through its appropriations power, and dispositions of Municipal property, which is apparent in the proposed Draft Fish and Wildlife Plan under the 1991 Agreement, requires Assembly approval. The proposed Ordinance clarifies incurring and obligating the Municipality in these circumstances where the proposed Final Fish and Wildlife Plan will become effective upon approval by the Governor, requires Assembly prior approval.

Section 1. The Proposed AO corrects an oversight in the language of AMC 3.20.070 which had apparently delegated broad policy-making decisions for utilities to the Mayor. This language is an improper delegation of the Assembly’s authority as the legislative policy-making branch of the municipal government and directly conflicts with the language of AMC section 26.30.025 as codified in AO 2023-131. The changes proposed in this section will clarify that except for operational policies, the policy making authorities, such as budgetary, financial, construction, and other policy considerations reside with the Assembly and thereby resolves the conflict in the Code.

Sections 2 & 3. These proposed changes clarify the Assembly’s approval authority over any agreements acquiring or disposing of any interest in real property, including water rights. Specifically, these changes are meant to address a perceived gap in the Code where creative legal instruments have previously been used to grant private parties exclusive use of Municipal property. These proposed amendments make plain that the Assembly’s approval must be obtained for the Municipality to grant, dispose, or alter any parties’ right to acquire, dispose of, control or access public property, including wind, solar, mineral and water rights.

Section 4. This proposed change inserts a new requirement for the Assembly to

1 approve the final Fish and Wildlife program proposed under the 1991 Eklutna Dam
2 agreement, prior to submission the Governor. This change has proven necessary,
3 as the Eklutna Owners have made clear their intention to alter the Municipality's
4 access to drinking water and obligate the Municipality to fund the final program
5 inside the tax cap. These decisions have been made ignoring meaningful input from
6 and policy guidance passed and approved by the Assembly over the past seven
7 years and often in direct conflict to the guidance provided time and time again.
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9 **Section 5.** Finally, Section 5 inserts a new section of code that requires AWWU
10 submit any agreement for water rights to the Assembly for approval.
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12 **I request your support for the ordinance.**
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14 Prepared by: Assembly Counsel's Office
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16 Respectfully submitted: Christopher Constant, Assembly Chair
17 District 1- Northern Anchorage