

PRESS RELEASE



Assembly Overrides Mayor's Veto of Ordinance on Assembly Meeting Procedures

January 28, 2022

At a Special Meeting to address the Mayor's veto of Anchorage Ordinance 2021-117, an omnibus ordinance to update the code provisions that govern Assembly meetings and procedures, the Anchorage Assembly voted 9-2 to overturn the veto and uphold the ordinance.

"This ordinance is a simple and straightforward codification of longstanding procedures that ensure order and safety at Assembly meetings. It is critical to the functioning of the legislative branch of our municipal government that the Assembly Chair has the tools and resources needed to effectively run meetings," said Chair Suzanne LaFrance. "The Assembly rules, the Anchorage Charter and the Anchorage Municipal Code provide an abundance of opportunities for public input, notice and transparency. The changes in this ordinance do not infringe on those important rights of citizens to speak up and access their government. What it does do is prevent actions that can disrupt the business of our municipality and put participants at risk for their safety."

At the opening of the Special Meeting, Vice Chair Christopher Constant read the attached statement.

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Anchorage Assembly Leadership

January 28, 2022

Today the Anchorage Municipal Assembly overrode the Mayor's veto of Anchorage Ordinance 2021-117, as amended.

Vice Chair Constant provided the following in response to the Mayor's veto message.

1. **Omnibus ordinance.** AO 2021-117 is an omnibus ordinance that makes necessary updates and clarifications to the numerous code provisions that govern Assembly meetings and procedures. The memorandum submitted with the ordinance noted its broad goals:

The attached ordinance attends to the facts that: (1) some of the Assembly's customary practices, such as those relating to immediate reconsideration of an item, are addressed only in Robert's Rules, and not in municipal code; (2) some of the rules and nomenclature contained in Robert's Rules of Order, Newly Revised, depart from traditional Assembly practice; and (3) that further codification of the Assembly's rules of procedure in municipal code can reduce confusion and provide greater clarity to the public.

The ordinance cleans up several contradictions; makes the Assembly's rules more transparent and user-friendly; and the vast majority of its necessary updates are non-controversial.

Of note, among the several changes adopted in the ordinance is a provision that expands the right of the Mayor to call on municipal staff during Assembly debate.

2. **Three concerns.** The Mayor's veto message outlines concerns with just three provisions in the 16-page ordinance.

- a. **Distracting and Dangerous items.** The first is that codifying a prohibition on the bringing of "dangerous or distracting items" into the Chambers if they are "being used to create an actual disturbance" could somehow interfere with Alaska Statute 29.35.145. That concern is unwarranted. First, the provision in AO 2021-117 is broader in scope than the state law provision. It permits a response if members of the public attempt to bring into Assembly Chambers noisy devices, noxious materials, or signs that

block public view. Second, to the extent there is any conflict with the state law, everyone recognizes that AS 29.35.145 trumps local law, and local law must be applied in accordance with the state-law provision. AO 2021-117 does not require the municipality to violate, and will not result in the municipality violating, state law.

- b. **Ability of the Assembly to Control its Meetings.** Second, the Mayor expresses his belief that the Presiding Officer of the Assembly cannot give instructions to municipal security contractors while presiding over Assembly meetings, or perhaps that the presiding officer may only do so subject to the Mayor's consent or non-objection. That view is novel. No prior Mayor has ever expressed it, and it is entirely inconsistent with the municipality's actual practices from 1975 to 2021. It cannot be squared with the Charter's vesting of legislative power in the Assembly, or with the Charter's command that the Assembly determines its own rules and order of business, runs its own meetings, and that the meetings are overseen by a "presiding officer" elected from the Assembly. The Mayor's position involves significant overreach, a novel theory of expanded executive power, and would result in an untenable erosion of the ability of the Assembly to conduct its business. We recognize that the branches have an ongoing disagreement on this point; that disagreement should not prevent the Assembly from clarifying the meaning of a "motion to lay on the table," or from refining the order of business at a regular or special Assembly meeting. It should not preclude the body from acting on AO 2021-117, generally.
- c. **Silent testimony.** Last, the Mayor's veto message also addresses a provision in the ordinance designed to expedite Assembly business and public testimony when persons wish, in public testimony, to stand in silence. The Assembly recognizes that silent protest is a form of expression that is rightly recognized under the First Amendment. The Assembly respects silent protest. The Assembly also recognizes that, as a leading municipal law treatise puts it:

A City Council meeting is a governmental process with a governmental purpose. The Council has an agenda to be addressed and dealt with. Public forum or not, the usual first amendment antipathy to content-oriented control of speech cannot be imported into the Council chambers intact. Therefore, in dealing with agenda items, the Council does not violate the first amendment when it restricts public speakers to the subject at hand, and while a speaker may not be stopped from speaking because the moderator disagrees with

the viewpoint he is expressing, it certainly may stop [a speaker] if [the speaker's] speech becomes irrelevant or repetitious. Therefore, [a Court has held, for instance, that a] three-minute time limit allowed to each public speaker did not violate a meeting attendee's First Amendment free speech right because the meeting was a governmental process with a governmental purpose and an agenda to be addressed.¹

And further:

A city may regulate the noncommunicative aspects of protected speech so long as there is a rational basis for the regulation and the impingement on the right of free speech is reasonable.²

The code provision regarding to silent testimony is addressed to the “noncommunicative aspects” of “silent protest”; the provision permits silent protest, and allows it to continue for a speaker’s full three minutes. But the provision also aims at expediting Assembly business, and facilitating *more* public testimony, which are rational and valid goals.

Still, we appreciate the invitation in the Mayor’s veto message to “review [his] concerns” and “work with [him].” We would welcome a collaboration between Assembly Counsel and the Department of Law on whether there is a better way to address this subject.

In the meantime, the provision at issue does not *require* the Assembly to take additional testimony during another a speaker’s silence, and silent protest during public testimony has, to date, been exceedingly rare. The chair is not presently intending, notwithstanding changes to AMC 2.30.055B made by the ordinance, to change the manner in which silent protest has been historically received. AO 2021-117 can be enacted and generally made operative while additional legal review of this section occurs. The Assembly is certainly willing to revisit the provision in a future ordinance, if that is the recommendation from the department of law.

¹ § 24:434. *Forum analysis; time, place, and manner restrictions – Limited public forum*, 7 MCQUILLIN MUN. CORP. § 24:434 (3d ed.).

² § 24:431. *Forum analysis; time, place, and manner restrictions*, 7 MCQUILLIN MUN. CORP. § 24:431 (3d ed.).