

LAID-ON-THE-TABLE

Submitted by: Assembly Chair LaFrance, Vice
Chair Constant, and Assembly
Member Zaletel

Prepared by: Assembly Counsel's Office

For reading: January 19, 2023

ANCHORAGE, ALASKA
EO No. 2023-__

1 **AN EMERGENCY ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY**
2 **TO REQUIRE APPROVAL BY THE ASSEMBLY OF CONTRACTS AND**
3 **AMENDMENTS, WITH CERTAIN EXCEPTIONS, AT LOWER THRESHOLDS**
4 **THAN REQUIRED BY CURRENT ANCHORAGE MUNICIPAL CODE,**
5 **REPORTING OF SPECIFIC DETAILS OF CONTRACT AND SPENDING**
6 **MUNICIPAL RESOURCES WHEN SUBMITTING FOR ASSEMBLY APPROVAL,**
7 **AND NOTICE OF DELEGATION OF MUNICIPAL MAYORAL OR MANAGER**
8 **AUTHORITY AND DUTIES, BY REPEAL AND REPLACEMENT OF CERTAIN**
9 **SECTIONS OF TITLES 3 AND 7 OF THE ANCHORAGE MUNICIPAL CODE**
10 **EFFECTIVE FOR SIXTY DAYS.**

11
12 **WHEREAS**, the Anchorage Home Rule Charter, Article X, Section 10.03, provides
13 that, in case of an emergency as defined in Charter § 17.13(c), “an ordinance may
14 be introduced and adopted at the same meeting,” provided the Assembly makes a
15 finding in the emergency ordinance that an emergency exists and provides a
16 statement of the facts constituting the emergency; and

17
18 **WHEREAS**, Charter § 17.13(c) states that “*Emergency*’ means an unforeseen
19 occurrence or condition which results or apparently will result in an insufficiency of
20 services or facilities substantial enough to endanger the public health, safety or
21 welfare”; and

22
23 **WHEREAS**, Charter § 13.08(a) states in part: “No payment shall be made, or
24 obligation incurred except in accordance with appropriations. Obligations otherwise
25 incurred are void.”; and

26
27 **WHEREAS**, the Anchorage Municipal Code Title 7, *Purchasing and Contracts and*
28 *Professional Services*, governs the procurement of supplies, services and
29 construction required by the municipality, and requires that

- 30 - No contract, or amendment thereto, may be enforced against the Municipality
31 unless its terms have been approved in accordance with Title 7;
32 - No contract, or amendment thereto, may be approved or executed unless the
33 Chief Fiscal Officer has first certified funds are available, in accordance with
34 AMC section 6.30.050 (which requires, among other things, the chief fiscal
35 officer to “certify to the ... proper officer ... that the money required for such
36 contract, obligation or expenditure was appropriated by the assembly to the
37 credit of the fund from which it is to be drawn, and not appropriated for any
38 other purpose,” and further prohibits any “officer of the municipality [to]
39 authorize commencement of work on any contract, agreement or obligation
40 without first having been notified of funding approval.”);
- 41

1 **WHEREAS**, the current Administration under Mayor Bronson’s leadership has in
2 recent times admitted to failures to comply with Anchorage Municipal Code Title 7,
3 *Purchasing and Contracts and Professional Services*, one notable example being
4 the failure to obtain Assembly approval of AM 496-2022 before authorizing
5 construction work to proceed under proposed Amendment 2 to contract No.
6 2022001049 to add \$4.9 Million for the proposed MOA Navigation Center, as
7 required by AMC section 7.15.080A. and D.;

8
9 **WHEREAS**, on Monday December 19, 2022, Municipal Manager Amy Demboski,
10 who started in the role when the mayor took office in July of 2021, was allegedly
11 fired by Mayor Bronson, and no reasons provided publicly other than it was a
12 personnel matter; and

13
14 **WHEREAS**, since then, Ms. Demboski has publicly stated her belief that she was
15 fired in retaliation for an e-mail sent from her to the mayor raising concerns about
16 several matters, including city code violations by the mayor and other city officials,
17 errors on contracts executed in violation of municipal code, some occurring when
18 the mayor “granted the Purchasing Director unlimited signing authority”; and

19
20 **WHEREAS**, although that improper signature authority was rescinded by the mayor
21 before Ms. Demboski sent her e-mail, she stated “the challenge remains, we do not
22 know how many contracts may have been inappropriately executed”; and

23
24 **WHEREAS**, in addition to the allegations made by Ms. Demboski, since the mayor
25 took office, the Assembly has received belated notice of contractual obligations and
26 amendments to contracts that have contributed to an ongoing persistent confusion
27 about the capacity and efficacy of essential Municipal services, such as snow
28 plowing and hauling; and

29
30 **WHEREAS**, as the legislative branch, the Anchorage Assembly has the
31 appropriations power of the Municipality and is responsible to the people of
32 Anchorage to oversee that taxpayer funds are spent legally and effectively in
33 accordance with Municipal Code; and

34
35 **WHEREAS**, the Assembly in the last year has repeatedly had to delay Municipal
36 business due to errors in items for contracts and appropriations brought for its
37 approval; and

38
39 **WHEREAS**, the Assembly has an ongoing reasonable basis to believe that
40 municipal resources, particularly the spending of taxpayer funds, may not be in
41 compliance with Municipal Code given the lack of cooperation from the Bronson
42 Administration with reporting, transparency and resolving questions regarding the
43 consistency of contracts with appropriations and their stated purposes; and

44
45 **WHEREAS**, past and continued actions by the Bronson Administration that may be
46 in violation of current Anchorage Municipal Code Title 7 have resulted in in an
47 insufficiency of services or facilities substantial enough to endanger the public
48 health, safety or welfare; now, therefore

49
50 **THE ANCHORAGE ASSEMBLY ORDAINS:**

1
2 **Section 1.** Pursuant to Anchorage Municipal Charter Section 10.03, the
3 Assembly hereby specifically finds that based on circumstances described in this
4 emergency ordinance immediate action is now required. Failure to immediately
5 address these issues will likely result in effects on Municipal services and business
6 in a manner substantial enough to endanger the welfare of the Municipality.

7
8 **Section 2.** The following sections of Anchorage Municipal Code Title 7 are
9 repealed and replaced by the following for 60 days to read as follows (*text that is a*
10 *substantive change from current Code is bolded and underlined for convenience of*
11 *the reader, but current code that is deleted may not be shown*):

12
13 **7.15.040 - Assembly approval of contracts.**

14
15 A. No contract for supplies, services, professional services or
16 construction whereby the municipality is obligated to pay more than
17 **\$10,000.00** pursuant to a contract awarded through competitive
18 procedures, which are described in sections 7.20.020 through
19 7.20.040(bids) and 7.20.060 (proposals), or more than **\$10,000.00**
20 including any amendment pursuant to contracts awarded under
21 section 7.20.080A.5, or more than **\$10,000.00** pursuant to contracts
22 awarded through other authorized procedures, may be executed
23 unless the assembly has approved a memorandum setting forth the
24 essential terms of the contract. To the extent applicable for particular
25 contracts, the following essential terms shall be set forth:

- 26 1. The identity of the contractor;
27 2. The contract price;
28 3. The nature and quantity of the performance that the
29 municipality shall receive under the contract;
30 4. The using agency;
31 5. The time for performance under the contract;
32 **6. Any terms that allow for supplies, services, professional**
33 **services or construction not contemplated within the**
34 **subject of the memorandum submitted for assembly**
35 **approval.**

36
37 **For all contracts awarded through the competitive process described**
38 **in subsection A of this section, a monthly report of contracts awarded**
39 **during the current month shall be provided to the Assembly by the 15th**
40 **of the following month and contain the information described in**
41 **subsections 1. through 6. of this subsection and include information**
42 **for any payments made under such contracts, including the fund**
43 **source for payment and the amount paid.**

44
45 B. If contracts are awarded to more than one bidder pursuant to an
46 invitation for bids, contracts with different bidders shall be considered
47 separately for purposes of determining the application of subsection
48 A. of this section. If any contract to be awarded under a given bid is
49 subject to assembly approval, the award of other contracts pursuant

1 to the same invitation for bids may, at the discretion of the purchasing
2 officer, be delayed pending assembly approval.
3

4 C. No grant to a governmental or quasi-governmental agency or to a
5 private nonprofit corporation under the provisions of Chapter 7.70 for
6 **\$10,000.00 or more** may be issued unless the assembly has
7 approved a memorandum setting forth:
8

- 9 1. The identity of the grantee;
- 10 2. The grant amount;
- 11 3. The purpose to which grant funds are to be devoted; and
- 12 4. The agency charged with administration of the grant.

13
14 D. No contractor may provide supplies, services, professional services,
15 or construction provided to the municipality before the applicable
16 requirements of this section are first satisfied. No contract for
17 construction which exceeds \$3,500,000.00 may be executed unless
18 it has first been reviewed for a community workforce agreement as
19 required by section 7.15.045.
20

21 E. Regardless of the amount involved, all contracts for professional
22 lobbying services and must be approved in advance by the
23 assembly.
24

25 **7.15.080 - Contract amendments – Assembly amendments.**

26
27 A. No contract amendment or change order that will cause the total
28 value of the contract to exceed the limits specified below may be
29 executed unless the assembly has approved a memorandum setting
30 forth the essential terms of the amendment or change order request:

- 31 1. For contracts with an original award value of **\$10,000.00** or
32 less excluding contracts awarded under section 7.20.080A.5.;
33 a contract amendment or change order, or cumulative contract
34 amendments or change orders, that will cause the total
35 contract amount, as amended, to exceed **\$12,500.00** or 125
36 percent of the original contract award, whichever is greater.
37 For contracts awarded under section 7.20.080A.5.; any
38 contract amendment or change order, or cumulative or
39 successive contract amendments or change orders, that will
40 cause the total contract amount to exceed **\$10,000.00**, or
41 continue to exceed **\$10,000.00**, as amended.
- 42 2. For contracts with an original award value greater than
43 **\$10,000.00** up to **\$150,000.00**; a contract amendment or
44 change order, or cumulative contract amendments or change
45 orders, that will cause the total contract amount, as amended,
46 to exceed 125 percent of the original contract award, or to
47 increase the original contract by **\$30,000.00**, whichever is
48 less.
- 49 3. For contracts with an original award value greater than
50 **\$150,000.00** up to **\$1,000,000.00**; a contract amendment or

1 change order, or cumulative contract amendments or change
 2 orders, that will cause the total contract amount, as amended,
 3 to exceed 120 percent of the original contract award, or to
 4 increase the original contract by **\$50,000.00**, whichever is
 5 less.

6 4. For contracts with an original award value greater than
 7 **\$1,000,000.00**; the department shall recommend, with
 8 concurrence of the purchasing officer, the maximum contract
 9 amendment or change order value that can be executed
 10 without assembly approval **not to exceed 10 percent or**
 11 **\$100,000.00**. This value shall be established and approved
 12 concurrently with the contract award under section 7.15.040.

13 B. For contracts that contain one or more optional contract periods, and
 14 where the municipality desires to exercise the option, a follow-on
 15 period may be executed in an amount consistent with the original
 16 contract terms, notwithstanding subsection A herein. The individual
 17 option period is considered a separate action and not an amendment
 18 or change order. However, a contract amendment or change order,
 19 or cumulative contract amendments or change orders, issued within
 20 the original or any optional contract period, shall be subject to
 21 subsection A herein. If the original contract period or any optional
 22 period is otherwise subject to section 7.15.040, such approval shall
 23 be received prior to contract execution.

24 C. For construction contracts where the original contract value is greater
 25 than \$500,000.00, the administering agency or department shall
 26 submit informational memoranda to the assembly that, at a minimum,
 27 lists the contractor name and project identity, the original contract
 28 amount, and all contract amendments or change orders processed
 29 against the contract. Informational memoranda shall be submitted no
 30 later than 60 days after issuing the final pay estimate.

31 D. No contractor may provide supplies, services, professional services,
 32 or construction provided to the municipality before the applicable
 33 requirements of this section are first satisfied.

34
 35 **7.20.090- Emergency procurements and waiver of formal procurement**
 36 **procedures.**

37 A. The municipality may award a contract for supplies, services,
 38 professional services or construction without competition, formal
 39 advertising or other formal procedure if:

40 1. The mayor determines in writing that an emergency
 41 threatening the public health, safety or welfare requires that a
 42 contract be awarded without delay; or

43 2. The mayor determines, in writing, that waiver of the formal
 44 procedures of this title is necessary because time is of the
 45 essence, **meaning there is not sufficient time to bring the**
 46 **request to a regular meeting of the Assembly,** and the best
 47 interests of the municipality will be served by such action; **or**

48 3. The assembly authorizes by resolution the temporary
 49 suspension of procurement rules in order to expend federal or
 50

1 state funds expeditiously in accordance with the funding intent
 2 and the assembly make a finding that formal procurement is
 3 reasonably likely to frustrate or delay the intent; or
 4 4. The assembly authorizes by resolution the temporary
 5 suspension of procurement rules in order to expend federal or
 6 state funds prior to expiration of spending authority for said
 7 funds and the assembly makes a finding that formal
 8 procurement is reasonably unlikely to be completed in time to
 9 fully utilize the funds.

10
 11 B. Contracts awarded under this section shall be reported to the
 12 assembly no later than the second regular meeting following award of
 13 the contract. The report shall include justification for the contract
 14 **including under which subsection justification is claimed,**
 15 **stating with particularity the facts and circumstances relied upon**
 16 **for the justification,** all costs of the contract, and identification of the
 17 persons or entity awarded the contract.

18
 19 C. Waivers granted under subsection A.2. shall be reported in writing to
 20 the assembly within 24 hours of issuance **including all the**
 21 **information that is required in subsection B and prior to the**
 22 **execution of any contract under the waiver. Execution of a**
 23 **contract under subsection A.2 may not occur until 48 hours after**
 24 **notice of the waiver is provided.** The assembly may revoke a waiver
 25 by resolution.
 26

27 **Section 3.** The following sections of Anchorage Municipal Code chapter 3.20 are
 28 repealed and replaced by the following for 60 days to read as follows (*text that is a*
 29 *substantive change from current Code is bolded and underlined for convenience of*
 30 *the reader, but current code that is deleted may not be shown):*

31
 32 **3.20.040 – Office of the Mayor.**

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 34 A. The mayor may assign such personnel to the office of the mayor as
 35 are necessary to help the mayor carry out the duties of that office.

36
 37 B. The mayor may designate one person to serve as chief of staff and
 38 assign to that person such administrative and managerial duties,
 39 including policy coordination and oversight of executive branch
 40 agencies, as the mayor determines appropriate.

41
 42 C. Within the office of the mayor, and under the mayor's supervision,
 43 or supervision of designated subordinate officials, are those
 44 municipal departments described in section 3.20.070.
 45

46 **D. The mayor shall provide immediate written notice to the Clerk**
 47 **and the Chair of the Assembly when the mayor delegates**
 48 **authority pursuant to subsections A through C of this section or**
 49 **as provided under charter or other provisions of Municipal code,**
 50 **including but not limited to signatory authority on behalf of the**

Municipality that expends the resources and/or transfers assets of the Municipality.

3.20.045 – Office of the Municipal Manager.

- A. Municipal management activities for the municipality shall be undertaken by the office of the municipal manager within the executive branch.
- B. The office shall be administered by a manager who is appointed by the mayor and confirmed by the assembly. The manager serves at the pleasure of the mayor.
- C. The manager shall be responsible to the mayor for the management and operation of those departments set forth in section 3.20.070.
- D. Generally, the office of the municipal manager is responsible to the mayor for overall municipal administrative policy, public safety, and operations of the municipality.
- E. The Municipal Manager shall provide immediate written notice to the Clerk and the Chair of the Assembly when the Municipal Manager delegates authority held by the Municipal Manager pursuant to subsections A-D of this section or as provided under charter or other provisions of Municipal code.**

Section 5. This Emergency Ordinance shall be effective immediately upon passage and approval by the Assembly for sixty (60) days. Upon expiration of this period or earlier termination by Assembly action, the Code text repealed by this emergency ordinance is restored.

PASSED AND APPROVED by the Anchorage Assembly this 20th day of January, 2023.

Chair

ATTEST:

Municipal Clerk

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