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Submitted by: Assembly Chair LaFrance and Vice
Chair Constant
Prepared by: Assembly Counsel's Office
For reading: January 19, 2023

**ANCHORAGE, ALASKA
EO No. 2023-_____**

**AN EMERGENCY ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY
AMENDING ANCHORAGE MUNICIPAL CODE CHAPTERS 2.60 AND 14.60 TO
UPDATE PROVISIONS FOR THE OFFICE OF THE OMBUDSMAN TO PROVIDE
AUTHORITY AND PROTECTIONS REASONABLE AND NECESSARY FOR
INVESTIGATION OF COMPLAINTS QUALIFYING FOR WHISTLEBLOWER
PROTECTION UNDER THE OMBUDSMAN'S JURISDICTION.**

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

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

WHEREAS, the Charter's Bill of Rights, Article II, Section (6) guarantees to the people of Anchorage "the right to the assistance of a municipal ombudsman in dealing with grievances and abuses"; and

WHEREAS, the current Administration has allegedly demonstrated a shocking disregard for the existing procedural safeguards, including but limited to those outlined in Municipal Code, a disdain for oversight, and a wanton disrespect for the rights of its employees and residents, resulting in numerous complaints alleging hostile work conditions, sexual harassment, retaliatory personnel practices, improper contracting procedures, and improperly committing municipal funds; and

WHEREAS, the Ombudsman represents the only "independent, impartial municipal office, readily available to the public, responsible to the Assembly, empowered to investigate the acts of administrative agencies and to recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and equity in the provision of municipal services," as stated in Anchorage Municipal Code section 2.60.010; and

WHEREAS, the integrity of the of the Ombudsman's investigations depend on the office's ability to effectively access critical information, interview witnesses, and protect the confidentiality of persons involved; and

WHEREAS, the Ombudsman has become aware of many municipal employees who

1 have alleged that they have been intimidated in an effort to dissuade them from
2 utilizing the Ombudsman’s Office out of concern pertinent records are inaccessible to
3 the Ombudsman and staff could be required to disclose investigation work product or
4 required to testify in administrative proceedings; and

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6 **WHEREAS**, the Ombudsman has inherent authority to investigate and has access to
7 confidential records, but due to the refusal of the Human Resources Department to
8 comply with his lawful requests for records, the Assembly is explicitly granting the
9 authority with the code amendments proposed herein; and

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11 **WHEREAS**, it has become apparent AMC chapter 2.60 governing the Ombudsman’s
12 investigations do not provide adequate authorization to access some municipal
13 records and protection or confidential status for the Ombudsman’s investigations in
14 response to whistleblower complaints by municipal employees that are a matter of
15 public concern, as provided in AMC chapter 3.75; and

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17 **WHEREAS**, recent public events and media reports demonstrate the urgent need for
18 the authority and protections provided by this emergency ordinance; and

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20 **WHEREAS**, although the Ombudsman is “barred from inquiry into acts of the Mayor,
21 the Assembly or the School Board” under AMC section 2.60.110E., all employee
22 subordinates to these elected leaders are subject to the Ombudsman’s jurisdiction
23 and this ordinance is not intended to change that limited scope; and

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25 **WHEREAS**, provisions in Anchorage Municipal Code Chapter 2.60 providing for the
26 Office of the Ombudsman are presented for update; now therefore,

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28 **THE ANCHORAGE ASSEMBLY ORDAINS:**

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30 **Section 1.** Pursuant to Anchorage Municipal Charter Section 10.03, the Assembly
31 hereby specifically finds that agencies and offices within the Municipality have refused
32 and resisted the Office of the Ombudsman’s efforts to attain evidence to which it is
33 legally entitled, individuals have discouraged employees from filing complaints and
34 created a culture of intimidation and deprived the people of Anchorage, and
35 particularly municipal employees, of one of their guaranteed rights to the extent it
36 constitutes an emergency and now requires immediate action. Failure to immediately
37 address these issues will likely result in an insufficiency of services substantial
38 enough to endanger the public health, safety, or welfare.

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40 **Section 2.** Anchorage Municipal Code chapter 2.60 is hereby amended to read as
41 follows (*the remainder of the chapter is not affected and therefore not set out*):

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43
44 **Chapter 2.60 - OFFICE OF THE OMBUDSMAN**

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46 **2.60.130 Investigative powers.**

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48 A. In an investigation the Ombudsman may:

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3. Hold private hearings.

4. Any other provisions of law notwithstanding, have access to and examine and copy, without payment of a fee, any municipal or agency records, including personnel files, human resource records, or any other records which are confidential by law, subject to applicable state or federal laws. The Ombudsman shall not have access to legally privileged records held by the Municipal Attorney, legal counsel for any municipal department or other authority, or attorney-client records held by clients of the Municipal Attorney or other legal counsel to the municipality. The Ombudsman shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure.

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(AO No. 77-94; AO No. 2017-40 , § 4, 3-21-17)

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2.60.140 Recommendations.

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C. Except in cases warranting referral to law enforcement or prosecutorial authorities, b[B]efore offering a report or recommendation which is critical of a department or person, the Ombudsman shall consult with that department or person and give them an opportunity to reply. Any report or recommendations provided to a department or person under this section remains confidential and may not be disclosed to the public by that department or person. In presenting the final report or recommendation, the Ombudsman shall include any reply made by the department or person.

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(AO No. 77-94; AO No. 2017-40 , § 4, 3-21-17)

2.60.145 Confidentiality.

A. The Ombudsman shall maintain confidentiality with respect to all matters and the identities of the complainants or witnesses coming before the Ombudsman except insofar as disclosures may be necessary to enable the Ombudsman to carry out duties and to support recommendations. However, the Ombudsman may not disclose a confidential record obtained from an agency. [DISCLOSURE OF THE NAMES OF COMPLAINANTS AND WITNESSES MAY BE MADE ONLY IF DISCLOSURE IS NECESSARY TO FACILITATE INVESTIGATION OF A COMPLAINT, OR WITH CONSENT OF THE COMPLAINANT OR WITNESS.]

B. Voluntary disclosure by an agency to the Ombudsman under this chapter of a communication that is subject to the attorney-client privilege, or attorney work-product privilege, does not waive the

Section 3. Anchorage Municipal Code section 14.60.030 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

14.60.030 Fine schedule.

The fine schedule under this chapter is as follows:

Code Section	Offense	Penalty/Fine
1.15.100A.8.	Ethics violations	Shall not exceed \$5,000.00 for each offense
2.60.180	Hindering ombudsman	500.00 [75.00]
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(AO No. 93-167(S-1), § 1, 4-13-94; AO No. 94-108, § 1, 10-5-94; AO No. 94-134, § 2, 9-8-94; AO No. 95-42, § 2, 3-23-95; AO No. 95-67(S), § 9, 7-1-95; AO No. 95-102, § 1, 4-26-95; AO No. 95-118, § 3, 9-1-95; AO No. 95-163(S), § 21, 8-8-95; AO No. 95-195(S-1), 1-1-96; AO No. 96-51(S-1), § 2, 8-1-96; AO No. 96-96(S-1), § 2, 2-1-97; AO No. 96-126(S), § 3, 10-1-96; AO No. 96-137(S), § 9, 1-2-97; AO No. 97-88, § 3, 6-3-97; AO No. 97-107, § 3, 11-17-97; AO No. 97-133(S), § 1, 11-11-97; AO No. 98-27(S-1), § 2, 11-11-97; AO No. 98-160, § 2, 12-8-98; AO No. 99-13(S), 2-9-99; AO No. 99-91(S), § 4, 7-13-99; AO No. 2000-64, § 1, 4-18-00; AO No. 2000-116(S), § 4, 7-18-00; AO No. 2000-127(S), § 2, 10-14-00; AO No. 2000-129(S), § 26, 11-21-00; AO No. 2001-48, § 1, 3-13-01; AO No. 2001-74(S), § 2, 4-17-01; AO No. 2001-4, § 2, 2-6-01; AO No. 2001-145(S-1), § 11, 12-11-01; AO No. 2003-68, § 1, 9-30-03; AO No. 2003-97, § 4, 9-30-03; AO No. 2003-117, § 2, 1-28-03; AO No. 2003-130, § 8, 10-7-03; AO No. 2003-152S, § 10, 1-1-04; AO No. 2004-1, § 2, 1-1-03; AO No. 2004-99, § 2, 6-22-04; AO No. 2004-100(S-1), § 6, 1-1-05; AO No. 2004-171, § 1, 1-11-05; AO No. 2005-160, § 9, 11-1-05; AO No. 2005-84(S), § 3, 1-1-06; AO No. 2005-185(S), § 35, 2-28-06; AO No. 2005-124(S-1A), § 33, 4-18-06; AO No. 2006-39, § 6, 4-11-06; AO No. 2006-54, § 1, 5-2-06; AO No. 2006-80, § 1, 6-6-06; AO No. 2007-50, § 4, 4-10-07; AO No. 2007-60, § 4, 11-1-07; AO No. 2007-70, § 3, 5-15-07; AO No. 2008-84(S), § 5, 7-15-08; AO No. 2009-61, § 3, 7-7-09; AO No. 2009-82, § 5, 7-7-09; AO No. 2009-40(S), § 3, 7-21-09; AO No. 2009-112, § 4, 10-13-09; AO No. 2009-122, § 2, 12-17-09; AO No. 2010-35(S), § 7, 5-11-10; AO No. 2010-39, § 2, 5-11-10; AO No. 2010-87(S), § 3, 12-7-10; AO No. 2011-46, § 4, 4-12-11; AO No. 2011-59, § 10, 5-24-11; AO No. 2011-106(S), § 3, 11-8-11; AO No. 2011-112, § 4, 11-22-11, eff. 12-22-11; AO No. 2012-10, § 1, 1-31-12; AO No. 2012-77, § 29, 8-7-12; AO No. 2013-109(S-1), § 5, 12-3-13; AO No. 2013-130(S-1), § 1, 1-14-14; AO No. 2014-42, § 31, 6-21-14; AO No. 2014-85, § 4, 8-5-14; AO No. 2014-110(S), § 2, 9-9-14; AO No. 2014-137(S), § 3, 11-18-14; AO No. 2015-23(S), § 20, 3-24-15; AO No. 2015-48, § 16, 5-14-15; AO No. 2015-54, § 1, 5-26-15; AO No. 2015-65, § 4, 6-9-15; AO No. 2015-111(S-1), § 2, 1-1-16; AO No. 2016-16(S), § 4, 2-9-16; AO No. 2016-76(S), § 7, 7-12-16; AO No. 2016-81(S), § 4, 8-25-16; AO No. 2016-83(S), § 9, 7-26-16; AO No. 2016-82, § 3, 8-9-16; AO No. 2016-116, § 2, 10-18-16; AO No. 2016-115(S), § 2, 11-15-16; AO No. 2016-124(S), §

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11, 12-20-16; AO No. 2017-26 , § 2, 5-1-17; AO No. 2017-29(S) , § 61, 6-1-17; AO No. 2017-30 , § 3, 3-21-17; AO No. 2017-31(S) , § 5, 5-26-17; AO No. 2017-119(S) , § 4, 11-9-17; AO No. 2017-101 , § 2, 2-5-18; AO No. 2017-161(S) , § 3, 2-27-18; AO No. 2017-16 , § 3, 2-14-17; AO No. 2017-129 , § 2, 1-23-18; AO No. 2018-63(S) , § 2, 8-28-18; AO No. 2018-100(S) , § 2, 1-1-19; AO No. 2018-110 , § 2, 12-18-18; AO No. 2019-9(S) , § 2, 2-12-19; AO No. 2019-12 , § 2, 3-5-19; AO No. 2019-15(S) , § 2, 3-19-19; AO No. 2019-34 , § 5, 4-18-19; AO No. 2019-50(S) , § 2, 6-6-19; AO No. 2019-66 , § 26, 6-18-19; AO No. 2019-74(S) , § 2, 6-18-19; AO No. 2019-79(S) , § 2, 7-9-19; AO No. 2019-90(S) , § 7, 8-20-19; Ord. No. 2020-4(S) , § 3, 6-24-20; AO No. 2020-65 , § 2, 9-25-20; AO No. 2020-103 , § 2, 11-4-20)

Section 4. The Assembly finds compelling and reasonable justifications to allow the increase in the fine and penalty amounts set forth in Section 3 of this ordinance to exceed the limitation on increases in Anchorage Municipal Code section 3.99.020 and hereby authorizes the increases in those sections notwithstanding the limitation.

Section 5. This Emergency Ordinance shall be effective immediately upon passage and approval by the Assembly for sixty (60) days. The code amendments contained here are automatically repealed upon expiration of the effectiveness of this Emergency Ordinance, or by action of the Assembly, whichever is occurs first.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2023.

Chair of the Assembly

ATTEST:

Municipal Clerk