

ANCHORAGE, ALASKA
EO No. 2023-3, As Amended

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

7
8 **WHEREAS**, the Anchorage Home Rule Charter, Article X, Section 10.03, provides
9 that, in case of an emergency as defined in Charter § 17.13(c), "an ordinance may be
10 introduced and adopted at the same meeting," provided the Assembly makes a
11 finding in the emergency ordinance that an emergency exists and provides a
12 statement of the facts constituting the emergency; and

13
14 **WHEREAS**, Charter § 17.13(c) states that "*Emergency*" means an unforeseen
15 occurrence or condition which results or apparently will result in an insufficiency of
16 services or facilities substantial enough to endanger the public health, safety or
17 welfare"; and

18
19 **WHEREAS**, the Charter's Bill of Rights, Article II, Section (6) guarantees to the
20 people of Anchorage "the right to the assistance of a municipal ombudsman in dealing
21 with grievances and abuses"; and

22
23 **WHEREAS**, the current Administration has allegedly demonstrated a shocking
24 disregard for the existing procedural safeguards, including but limited to those
25 outlined in Municipal Code, a disdain for oversight, and a wanton disrespect for the
26 rights of its employees and residents, resulting in numerous complaints alleging
27 hostile work conditions, sexual harassment, retaliatory personnel practices, improper
28 contracting procedures, and improperly committing municipal funds; and

29
30 **WHEREAS**, the Ombudsman represents the only "independent, impartial municipal
31 office, readily available to the public, responsible to the Assembly, empowered to
32 investigate the acts of administrative agencies and to recommend appropriate
33 changes toward the goals of safeguarding the rights of persons and of promoting
34 higher standards of competency, efficiency and equity in the provision of municipal
35 services," as stated in Anchorage Municipal Code section 2.60.010; and

36
37 **WHEREAS**, the integrity of the of the Ombudsman's investigations depend on the
38 office's ability to effectively access critical information, interview witnesses, and
39 protect the confidentiality of persons involved; and

40
41 **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

5
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

10
11 **WHEREAS, access to personnel files is needed because the Ombudsman has**
12 **had to deal with a significant increase in personnel related complaints and**
13 **complaints regarding the conduct of municipal employees, including serious**
14 **allegations over the last 18 months; yet the Human Resources Department has**
15 **been unable to provide documentary information due to the interpretation of**
16 **the confidentiality of personnel files, creating incomplete Ombudsman inquiries**
17 **and investigations in addressing personnel and personnel-related complaints**
18 **and requiring this extension of the law; and**

19
20 **WHEREAS**, it has become apparent AMC chapter 2.60 governing the Ombudsman's
21 investigations do not provide adequate authorization to access some municipal
22 records and protection or confidential status for the Ombudsman's investigations in
23 response to whistleblower complaints by municipal employees that are a matter of
24 public concern, as provided in AMC chapter 3.75; and

25
26 **WHEREAS**, recent public events and media reports demonstrate the urgent need for
27 the authority and protections provided by this emergency ordinance; and

28
29 **WHEREAS**, although the Ombudsman is "barred from inquiry into acts of the Mayor,
30 the Assembly or the School Board" under AMC section 2.60.110E., all employee
31 subordinates to these elected leaders are subject to the Ombudsman's jurisdiction
32 and this ordinance is not intended to change that limited scope; and

33
34 **WHEREAS, the Ombudsman is committed to good faith, fair dealing and fair**
35 **process for all individuals; and**

36
37 **WHEREAS**, provisions in Anchorage Municipal Code Chapter 2.60 providing for the
38 Office of the Ombudsman are presented for update; now therefore,

39
40 **THE ANCHORAGE ASSEMBLY ORDAINS:**

41
42 **Section 1.** Pursuant to Anchorage Municipal Charter Section 10.03, the Assembly
43 hereby specifically finds that agencies and offices within the Municipality have refused
44 and resisted the Office of the Ombudsman's efforts to attain evidence to which it is
45 legally entitled, individuals have discouraged employees from filing complaints and
46 created a culture of intimidation and deprived the people of Anchorage, and

1 particularly municipal employees, of one of their guaranteed rights to the extent it
2 constitutes an emergency and now requires immediate action. Failure to immediately
3 address these issues will likely result in an insufficiency of services substantial
4 enough to endanger the public health, safety, or welfare.

5
6 **Section 2.** Anchorage Municipal Code chapter 2.60 is hereby amended to read as
7 follows (*the remainder of the chapter is not affected and therefore not set out*):
8

9
10 **Chapter 2.60 - OFFICE OF THE OMBUDSMAN**

11 *** **

12 **2.60.130 Investigative powers.**

13
14 A. In an investigation the Ombudsman may:

15 *** **

16
17 3. Hold private hearings.

18
19 4. Any other provisions of law notwithstanding, have access to and
20 examine and copy, without payment of a fee, any municipal or
21 agency records, including ~~personnel files, human resource~~
22 ~~records, or any other~~ records which are confidential by law,
23 subject to applicable state or federal laws. The Ombudsman
24 shall not have access to legally privileged records held by the
25 Municipal Attorney, legal counsel for any municipal department
26 or other authority, or attorney-client records held by clients of the
27 Municipal Attorney or other legal counsel to the municipality. The
28 Ombudsman shall not disclose confidential records and shall be
29 subject to the same penalties as the legal custodian of the
30 records for any unlawful or unauthorized disclosure. The same
31 access in the foregoing applies to personnel files, human
32 resources department records, or any other records which
33 are confidential by law but they may not be copied or
34 removed.

35 *** **

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

37 *** **

38
39 **2.60.140 Recommendations.**

40 *** **

41
42 C. Except in cases warranting referral to law enforcement or prosecutorial
43 authorities, b[B]efore offering a report or recommendation which is
44 critical of a department or person, the Ombudsman shall consult with
45 that department or person and give them an opportunity to reply. Any
46 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.

*** *** ***

(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 privilege as to any other person.
- C. Records provided to the Ombudsman which are accorded confidential or privileged status under municipal, state or federal law shall not be disclosed by the Ombudsman, unless the communication is evidence of an act of an agency that the Ombudsman reasonably believes is criminal.

(AO No. 2017-40 , § 4, 3-21-17)

*** *** ***

2.60.165 Grievance against the ombudsman.

*** *** ***

- F. A civil action may not be brought against the Ombudsman or a member of the Ombudsman's staff for anything done, said, or omitted in performing the Ombudsman's duties or responsibilities under this chapter.

(AO No. 2017-40 , § 4, 3-21-17)

2.60.170 Misconduct by municipal personnel.

If the Ombudsman believes there is a breach of duty or misconduct by an officer or employee of the municipality in the conduct of the officer's or employee's official duties, the Ombudsman may refer the matter to the appropriate department head, to the Mayor, to the Board of Ethics, or, when appropriate, to the Municipal Prosecutor, District Attorney, or any other agency.

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

*** *** ***

2.60.190 Ombudsman's privilege not to testify or disclose documents.

A. The Ombudsman and staff of the Ombudsman may not testify or be deposed in a judicial or administrative proceeding regarding matters coming to their attention in the exercise of their official duties, except as may be necessary to enforce the provisions of this chapter.

B. The records of the Ombudsman and staff of the Ombudsman, including notes, drafts, and records obtained from an individual or agency during intake, review, or investigation of a complaint, and any reports not released to the public in accordance with the A.M.C. Sections 2.60.140, 2.60.155, are not subject to disclosure or production in response to a subpoena or discovery in a judicial or administrative proceeding, except as the Ombudsman determines may be necessary to enforce the provisions of this chapter. Disclosure by the Ombudsman is subject to the restrictions on disclosure in AMC sections 2.60.140-2.60.155.

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	<u>500.00 [75.00]</u>
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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), §

1 21, 8-8-95; AO No. 95-195(S-1), 1-1-96; AO No. 96-51(S-1), § 2, 8-1-96; AO
2 No. 96-96(S-1), § 2, 2-1-97; AO No. 96-126(S), § 3, 10-1-96; AO No. 96-
3 137(S), § 9, 1-2-97; AO No. 97-88, § 3, 6-3-97; AO No. 97-107, § 3, 11-17-97;
4 AO No. 97-133(S), § 1, 11-11-97; AO No. 98-27(S-1), § 2, 11-11-97; AO No.
5 98-160, § 2, 12-8-98; AO No. 99-13(S), 2-9-99; AO No. 99-91(S), § 4, 7-13-99;
6 AO No. 2000-64, § 1, 4-18-00; AO No. 2000-116(S), § 4, 7-18-00; AO No.
7 2000-127(S), § 2, 10-14-00; AO No. 2000-129(S), § 26, 11-21-00; AO No.
8 2001-48, § 1, 3-13-01; AO No. 2001-74(S), § 2, 4-17-01; AO No. 2001-4, § 2,
9 2-6-01; AO No. 2001-145(S-1), § 11, 12-11-01; AO No. 2003-68, § 1, 9-30-03;
10 AO No. 2003-97, § 4, 9-30-03; AO No. 2003-117, § 2, 1-28-03; AO No. 2003-
11 130, § 8, 10-7-03; AO No. 2003-152S, § 10, 1-1-04; AO No. 2004-1, § 2, 1-1-
12 03; AO No. 2004-99, § 2, 6-22-04; AO No. 2004-100(S-1), § 6, 1-1-05; AO No.
13 2004-171, § 1, 1-11-05; AO No. 2005-160, § 9, 11-1-05; AO No. 2005-84(S), §
14 3, 1-1-06; AO No. 2005-185(S), § 35, 2-28-06; AO No. 2005-124(S-1A), § 33,
15 4-18-06; AO No. 2006-39, § 6, 4-11-06; AO No. 2006-54, § 1, 5-2-06; AO No.
16 2006-80, § 1, 6-6-06; AO No. 2007-50, § 4, 4-10-07; AO No. 2007-60, § 4, 11-
17 1-07; AO No. 2007-70, § 3, 5-15-07; AO No. 2008-84(S), § 5, 7-15-08; AO No.
18 2009-61, § 3, 7-7-09; AO No. 2009-82, § 5, 7-7-09; AO No. 2009-40(S), § 3, 7-
19 21-09; AO No. 2009-112, § 4, 10-13-09; AO No. 2009-122, § 2, 12-17-09; AO-
20 2010-35(S), § 7, 5-11-10; AO No. 2010-39, § 2, 5-11-10; AO No. 2010-87(S), §
21 3, 12-7-10; AO No. 2011-46, § 4, 4-12-11; AO No. 2011-59, § 10, 5-24-11; AO
22 No. 2011-106(S), § 3, 11-8-11; AO No. 2011-112, § 4, 11-22-11, eff. 12-22-11;
23 AO No. 2012-10, § 1, 1-31-12; AO No. 2012-77, § 29, 8-7-12; AO No. 2013-
24 109(S-1), § 5, 12-3-13; AO No. 2013-130(S-1), § 1, 1-14-14; AO No. 2014-42,
25 § 31, 6-21-14; AO No. 2014-85, § 4, 8-5-14; AO No. 2014-110(S), § 2, 9-9-14;
26 AO No. 2014-137(S), § 3, 11-18-14; AO No. 2015-23(S), § 20, 3-24-15; AO
27 No. 2015-48, § 16, 5-14-15; AO No. 2015-54, § 1, 5-26-15; AO No. 2015-65,
28 § 4, 6-9-15; AO No. 2015-111(S-1), § 2, 1-1-16; AO No. 2016-16(S), § 4, 2-9-
29 16; AO No. 2016-76(S), § 7, 7-12-16; AO No. 2016-81(S), § 4, 8-25-16; AO
30 No. 2016-83(S), § 9, 7-26-16; AO No. 2016-82, § 3, 8-9-16; AO No. 2016-116
31, § 2, 10-18-16; AO No. 2016-115(S), § 2, 11-15-16; AO No. 2016-124(S), §
32 11, 12-20-16; AO No. 2017-26, § 2, 5-1-17; AO No. 2017-29(S), § 61, 6-1-17;
33 AO No. 2017-30, § 3, 3-21-17; AO No. 2017-31(S), § 5, 5-26-17; AO No.
34 2017-119(S), § 4, 11-9-17; AO No. 2017-101, § 2, 2-5-18; AO No. 2017-
35 161(S), § 3, 2-27-18; AO No. 2017-16, § 3, 2-14-17; AO No. 2017-129, § 2,
36 1-23-18; AO No. 2018-63(S), § 2, 8-28-18; AO No. 2018-100(S), § 2, 1-1-19;
37 AO No. 2018-110, § 2, 12-18-18; AO No. 2019-9(S), § 2, 2-12-19; AO No.
38 2019-12, § 2, 3-5-19; AO No. 2019-15(S), § 2, 3-19-19; AO No. 2019-34, §
39 5, 4-18-19; AO No. 2019-50(S), § 2, 6-6-19; AO No. 2019-66, § 26, 6-18-19;
40 AO No. 2019-74(S), § 2, 6-18-19; AO No. 2019-79(S), § 2, 7-9-19; AO No.
41 2019-90(S), § 7, 8-20-19; Ord. No. 2020-4(S), § 3, 6-24-20; AO No. 2020-65,
42 § 2, 9-25-20; AO No. 2020-103, § 2, 11-4-20)

43
44 **Section 4.** The Assembly finds compelling and reasonable justifications to allow the
45 increase in the fine and penalty amounts set forth in Section 3 of this ordinance to
46 exceed the limitation on increases in Anchorage Municipal Code section 3.99.020 and

1 hereby authorizes the increases in those sections notwithstanding the limitation.
2

3 **Section 5.** This Emergency Ordinance shall be effective immediately upon passage
4 and approval by the Assembly for sixty (60) days. The code amendments contained
5 here are automatically repealed upon expiration of the effectiveness of this
6 Emergency Ordinance, or by action of the Assembly, whichever is occurs first.
7

8
9 PASSED AND APPROVED by the Anchorage Assembly this 20th day of January,
10 2023.
11

12
13 *Suzanne LaFrance*

14 _____
15 Chair

16 ATTEST:

17
18 *Barbara A. Jones*

19 _____
20 Municipal Clerk
21