ANCHORAGE, ALASKA
AO No. 2022-60(S)

AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE CHAPTERS 3.10, GENERAL PROVISIONS, AND 27.20, SUPERVISORY BOARDS, AND SECTIONS 2.70.030 AND 29.10.060 TO FULFILL THE REQUIREMENT OF ANCHORAGE MUNICIPAL CHARTER SECTION 7.01(b) THAT THE ASSEMBLY BY ORDINANCE MUST ESTABLISH SPECIFIC PROCEDURES FOR REMOVAL OF AN ELECTED OFFICIAL FOR BREACH OF THE PUBLIC TRUST.

WHEREAS, Anchorage Municipal Charter section 7.01(b) provides, in part, “[t]he assembly by ordinance shall establish procedures for removal of elected officials for breach of the public trust, including provision for notice, a complete statement of the charge, a public hearing conducted by an impartial hearing officer, and judicial review”; and

WHEREAS, the requirements of section 7.01(b) have only been partly fulfilled; and

WHEREAS, the Assembly has by ordinance established procedures by which an assembly member or school board member may be removed for a breach of the public trust in Anchorage Municipal Code section 2.70.030, Removal from office, and AMC section 29.10.060, Removal of members from office, which could be updated for efficiency; and

WHEREAS, the Charter requires enactment of similar provisions applicable to other elected officials, including supervisory boards of service areas and the mayor; and

WHEREAS, this Ordinance would apply to these elected officials provisions similar to those currently applicable to assembly and school board members; and

WHEREAS, this ordinance will not have significant economic effects; now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code section 27.20.070 is hereby amended as follows (the remainder of the section is not affected and therefore not set out):

27.20.070 Vacancies generally; unexcused absences.

A. The office of an elected member of a supervisory board established under this chapter shall become vacant in the same manner as an elected office becomes vacant as provided in section 7.01(a) of the Charter. In addition, a [A] vacancy shall occur on the failure of a
member to:

1. Attend three consecutive regular or special meetings without excuse; or

2. Attend a two-thirds majority of the regular and special meetings during any calendar year without excuse.

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(CAC 2.64.060)

Section 2. Anchorage Municipal Code chapter 27.20, Supervisory Boards, is hereby amended to add a new section 27.20.085 to read as follows:

27.20.085 Removal from office.

An elected member of a supervisory board established under this chapter may be removed from office for breach of the public trust following the procedures set forth in this section.

A. Willful and knowing breach of duty or culpable indifference to official duties may constitute a breach of the public trust. For the purposes of this section actions constituting a breach of the public trust shall include, but are not limited to:

1. Acceptance of cash gifts from one doing business with the municipality;
2. Violation of chapter 1.15;
3. Perjury;
4. Falsification of records;
5. Filing false reports;
6. Nepotism;
7. Making personal use of municipal or school district property;
8. Destruction of municipal or school district property;
9. Official oppression;
10. Actual or attempted official misconduct, as defined by state law;
11. Ordering a municipal employee or contractor employed by the supervisory board to undertake an unlawful act;

B. Proceedings for removal from office may only [shall] be initiated by delivery of an accusation document to the municipal clerk setting forth the grounds for removal and specifying if delivery is to the assembly or the board of ethics. An accusation document may be submitted to the municipal clerk only by a majority vote of the assembly or decision
of the municipal board of ethics and must allege specific actions by the member that breach the public trust.

C. After a successful vote to submit it, the municipal clerk shall cause a copy of the accusation document to be served on the member in the same manner as service of process under Alaska Rules of Civil Procedure, and a copy delivered to the municipal attorney.

D. The municipal attorney shall review the accusation document for legal sufficiency. The municipal attorney shall determine the legal sufficiency of the allegations within ten days of receipt of the accusation document. If the municipal attorney determines that the allegations are legally insufficient, the removal action shall be discontinued. The municipal attorney's determination, if it rejects the accusation document, may be appealed to the superior court within 30 days. No interlocutory appeal is permitted from a determination by the municipal attorney that the accusation document is legally sufficient. Following a determination by the municipal attorney that the accusation document is legally sufficient, it shall be delivered to the municipal administrative hearings office established by Title 14, and the municipality shall employ an attorney of the member's choice, subject to the limitations of this subsection, to defend the charges. The attorney selected must be engaged in the active practice of law in the state. The fees charged by the attorney must be reasonable in both the rate and the amount of time expended. Reasonableness shall be evaluated in accordance with Alaska Bar Rule 35 and shall be subject to fee arbitration under the Alaska Bar Rules if the municipality disputes the reasonableness of the fees claimed.

E. A hearing conducted by the municipal administrative hearing officer shall be held no later than 30 days following appointment of the hearing officer. The hearing shall be open to the public and, unless otherwise provided in this section, shall be conducted in accordance with the procedures set forth in chapter 3.60, however the hearing officer shall expedite the matter within the required times set forth in this section and chapter 3.60 and shall grant extensions only for good cause. Good cause must be based upon matters either beyond the control of the party making application or conditions which would create a significant hardship if a continuance is not granted. Within ten days following the conclusion of the public hearing the hearing officer shall submit written findings and recommendations to the assembly. The recommendations shall include whether the member should be removed.

F. The standard of proof of the allegations in the accusation document to be applied by the hearing officer is proof by a preponderance of the
evidence. The hearing officer shall evaluate the evidence relating to the accusations set forth in the accusation document and evaluate both whether the allegations are supported and whether those actions alleged constitute a breach of the public trust as set forth in subsection A. of this section. Wrongful acts or admissions occurring while the member was acting in a private capacity as opposed to in a capacity as a public officer shall not constitute a breach of the public trust. [Willful and knowing breach of duty or culpable indifference to official duties may constitute a breach of the public trust.]

G. Within ten days of receiving the hearing officer's recommendations, the assembly shall vote on whether to remove the member who is the subject of the accusation document. Removal shall occur only on the concurrence of two-thirds of the fully constituted body.

H. The decision of the assembly acting upon the recommendations of the hearing officer may be appealed to the superior court within 30 days of the assembly's decision. If the assembly's decision is for removal, the office shall be considered vacant beginning at 12:01 a.m. seven days following the decision unless the appellate court issues a stay of the removal pending appeal. In evaluating whether to grant a stay of removal pending appeal, the fact that another individual may be seated as acting member shall not constitute irreparable harm. During a stay, the seat may be temporarily filled pending the outcome of the court case using the procedures in section 27.20.080. If, after exhaustion of appeals, the final ruling reverses the removal, the removed member shall be reseated for the remainder of the term for which the member was elected, and the acting member shall be displaced.

**Section 3.** Anchorage Municipal Code chapter 3.10, General Provisions, (Reserved) is hereby amended to rename the chapter and to add a new section 3.10.050 to read as follows:

**Chapter 3.10 - GENERAL PROVISIONS [(RESERVED)]**

3.10.050 Removal from office.

The mayor may be removed from office for breach of the public trust following the procedures set forth in this section:

A. **Willful and knowing breach of duty or culpable indifference to official duties may constitute a breach of the public trust.** For the purposes of this section actions constituting a breach of the public trust shall include, but are not limited to:
1. Acceptance of cash gifts from one doing business with the municipality;
2. Violation of chapter 1.15;
3. Perjury;
4. Falsification of records;
5. Filing false reports;
6. Nepotism;
7. Making personal use of municipal or school district property;
8. Destruction of municipal or school district property;
9. Official oppression;
10. Actual or attempted official misconduct, as defined by state law;
11. Ordering, or knowingly allowing a person appointed by the mayor to order, a municipal employee to undertake an unlawful act;
12. Substantial breach of a statutory-, Code- or Charter-imposed duty;
13. Failure to faithfully execute the directives of a duly enacted ordinance.

B. Proceedings for removal from office may only [shall] be initiated by delivery of an accusation document to the municipal clerk setting forth the grounds for removal and specifying if delivery is to the assembly or the board of ethics. An accusation document may be submitted to the municipal clerk only by a majority vote of the assembly or decision of the municipal board of ethics and must allege specific actions by the mayor that breach the public trust.

C. After a successful vote to submit it, the municipal clerk shall cause a copy of the accusation document to be delivered by personal service to the mayor and a copy delivered to the municipal attorney.

D. The municipal attorney, or an impartial third-party attorney retained by the Assembly to serve as special counsel, shall review the accusation document for legal sufficiency. An accusation approved by the assembly shall specify whether the accusation shall be reviewed for legal sufficiency by the municipal attorney or special counsel. The municipal attorney, or the retained special counsel, shall determine the legal sufficiency of the allegations within ten days of receipt of the accusation document. If the municipal attorney, or special counsel, determines that the allegations are legally insufficient, the removal action shall be discontinued. The municipal attorney's or special counsel's determination, if it rejects the accusation document, may be appealed to the superior court within 30 days. No interlocutory appeal is permitted from a determination by the municipal attorney or special counsel that the accusation document is legally sufficient. Following a determination by the municipal attorney or special counsel that the
accusation document is legally sufficient, the municipality shall employ
an attorney of the mayor’s choice, subject to the limitations of this
subsection, to defend the charges. The attorney selected must be
engaged in the active practice of law in the state. The fees charged by
the attorney must be reasonable in both the rate and the amount of
time expended. Reasonableness shall be evaluated in accordance
with Alaska Bar Rule 35 and shall be subject to fee arbitration under
the Alaska Bar Rules if the municipality disputes the reasonableness
of the fees claimed.

E. Within two weeks following the service of an accusation document, the
municipal clerk shall request that six names be submitted as potential
hearing officers by the American Arbitration Association unless
otherwise mutually agreed to by the assembly and the mayor. Three
of the names submitted should be from the state and three from out-
of-state. From these names the assembly and the mayor shall agree
upon a hearing officer who shall conduct the hearing concerning the
allegations in the accusation document. If no agreement is reached
within ten days of distribution of the list of potential hearing officers,
the hearing officer shall be selected by each side exercising
preemptory challenges to the six potential names in turn until only one
remains.

F. A hearing conducted by the appointed hearing officer shall be held no
later than 30 days following appointment of the hearing officer. The
hearing shall be open to the public and, unless otherwise provided in
this section, shall be conducted in accordance with the procedures set
forth in chapter 3.60, however the hearing officer shall expedite the
matter within the required times set forth in this section and
chapter 3.60 and shall grant extensions only for good cause. Good cause must be based upon matters either beyond the
control of the party making application or conditions which would create a significant hardship if a continuance is not
granted. Within ten days following the conclusion of the public hearing
the hearing officer shall submit written findings and recommendations
to the assembly. The recommendations shall include whether the
mayor should be removed.

G. The standard of proof of the allegations in the accusation document to
be applied by the hearing officer is proof by a preponderance of the
evidence. The hearing officer shall evaluate the evidence relating to
the accusations set forth in the accusation document and evaluate
both whether the allegations are supported and whether those actions
alleged constitute a breach of the public trust as set forth in subsection
A. of this section. Wrongful acts or admissions occurring while the
mayor was acting in a private capacity as opposed to in a capacity as
a public officer shall not constitute a breach of the public trust. [Willful and knowing breach of duty or culpable indifference to official duties may constitute a breach of the public trust.]

H. Within ten days of receiving the hearing officer's recommendations, the assembly shall vote on whether to remove the mayor. Removal shall occur only on the concurrence of two-thirds of the fully constituted body.

I. The decision of the assembly acting upon the recommendations of the hearing officer may be appealed to the superior court within 30 days of the assembly's decision. If the assembly's decision is for removal, the office shall be considered vacant beginning at 12:01 a.m. seven days following the decision unless the appellate court issues a stay of the removal pending appeal. In evaluating whether to grant a stay of removal pending appeal, the fact that another individual may be seated as acting mayor shall not constitute irreparable harm. During a stay, unless otherwise ordered by the court the seat is considered vacant and shall be filled in accordance with Charter 7.02(c) pending the outcome of the court case. If, after exhaustion of appeals, the final ruling reverses the removal, the removed mayor shall be reseated for the remainder of the term for which the mayor was elected, and the acting mayor shall return to the person's prior position.

Section 4. Anchorage Municipal Code section 2.70.030, Removal from office, is hereby amended as follows (the remainder of the section is not affected and therefore not set out):

2.70.030 - Removal from office.

A member of the municipal assembly may be removed from office for breach of the public trust following the procedures set forth in this section:

A. Willful and knowing breach of duty or culpable indifference to official duties may constitute a breach of the public trust. For the purposes of this section actions constituting a breach of the public trust shall include, but are not limited to:

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9. Official oppression;
10. Actual or attempted official misconduct, as defined by state law;
11. Unexcused absence from three consecutive meetings;
12[11]. Failure to attend 75 percent of meetings in a 24-month period; or

13[12]. Substantial breach of a statutory-, Code- or Charter-
imposed duty.

B. Proceedings for removal from office **may only [SHALL]** be initiated by delivery of an accusation document to the municipal clerk setting forth the grounds for removal and specifying if delivery is to the assembly or the board of ethics. An accusation document may be submitted to the municipal clerk only by a **majority [TWO-THIRDS]** vote of the assembly or [TWO-THIRDS MAJORITY] decision of the municipal board of ethics and must allege specific actions by the assembly member in question which breach the public trust.

C. After a successful vote to submit it, the municipal clerk shall cause a copy of the accusation document to **MUST** be delivered by personal service to the member of the assembly who is the subject of the accusation document and a copy delivered to the municipal attorney.

D. The municipal attorney shall review the accusation document for legal sufficiency. The municipal attorney shall determine the legal sufficiency of the allegations within ten days of receipt of the accusation document. If the municipal attorney determines that the allegations are legally insufficient, the removal action shall be discontinued. The municipal attorney's determination, if it rejects the accusation document, may be appealed to the superior court within **30 days.** No interlocutory appeal is permitted from a determination by the municipal attorney that the accusation document is legally sufficient. Following a determination by the municipal attorney that the accusation document is legally sufficient, the municipality shall employ an attorney of the accused's choice, subject to the limitations of this subsection, to defend the charges. The attorney selected must be engaged in the active practice of law in the state. The fees charged by the attorney must be reasonable in both the rate and the amount of time expended. Reasonableness shall be evaluated in accordance with Alaska Bar Rule 35 and shall be subject to fee arbitration under the Alaska Bar Rules if the municipality disputes the reasonableness of the fees claimed.

E. Within two weeks following the delivery of an accusation document, the municipal clerk shall request that six names be submitted as potential hearing officers by the American Arbitration Association. Three of the names submitted should be from the state and three from out-of-state. From these names the assembly and the accused shall agree upon a hearing officer who shall conduct the hearing concerning the allegations in the accusation document. If [ , OR, IF ] no agreement is reached within ten days of distribution of the list of potential hearing officers, the **hearing officer shall be selected by each side exercising preemptory challenges to the six potential names in turn until only one**
remains [THE MUNICIPAL CLERK SHALL SELECT A HEARING OFFICER FROM THE LIST WHO SHALL CONDUCT A HEARING CONCERNING THE ACCUSATIONS CONTAINED IN THE DOCUMENT FILED WITH THE MUNICIPAL CLERK AND SHALL PROVIDE A RECOMMENDATION TO THE ASSEMBLY]. If more than one assembly member is the subject of the accusation document or the alleged breach arises out of the same event, the same hearing officer shall hear those matters and may hold one consolidated hearing.

F. A hearing conducted by the appointed hearing officer shall be held no later than 30 days following appointment of the hearing officer. The hearing shall be open to the public and, unless otherwise provided in this section, shall be conducted in accordance with the procedures set forth in chapter 3.60, however the hearing officer shall expedite the matter within the required times set forth in this section and chapter 3.60 and shall grant extensions only for good cause. Good cause must be based upon matters either beyond the control of the party making application or conditions which would create a significant hardship if a continuance is not granted. Within ten days following the conclusion of the public hearing the hearing officer shall submit written findings and recommendations to the assembly. The recommendations shall include whether the officer should be removed.

G. The standard of proof of the allegations in the accusation document to be applied by the hearing officer is proof by a preponderance of the evidence. The hearing officer shall evaluate the evidence relating to the accusations set forth in the accusation document and evaluate both whether the allegations are supported and whether those actions alleged constitute a breach of the public trust as set forth in subsection A of this section. Wrongful acts or admissions occurring while the officer was acting in a private capacity as opposed to his capacity as a public officer shall not constitute a breach of the public trust. [WILLFUL AND KNOWING BREACH OF DUTY OR CULPABLE INDIFFERENCE TO OFFICIAL DUTIES MAY CONSTITUTE A BREACH OF THE PUBLIC TRUST.]

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I. The decision of the assembly acting upon the recommendations of the hearing officer may be appealed to the superior court within 30 days of the assembly's decision. If the assembly's decision is for removal, the office shall be considered vacant beginning at 12:01 a.m. seven days following the decision unless the appellate court issues a stay of the removal pending appeal. In evaluating whether to grant a stay of removal pending appeal the facts that the removed member could miss important votes and that another individual may be seated to
replace the removed member shall not constitute irreparable harm. During a stay, unless otherwise ordered by the court the seat is considered vacant and shall be filled in accordance with Charter 7.02(b) and section 2.70.020 pending the outcome of the court case. If, after exhaustion of appeals, the final ruling reverses the removal, the removed member shall be reseated for the remainder of the term for which elected, and any replacement, whether appointed or elected at a special election, shall be displaced.

(AO No. 93-54(S-1), 5-5-93)

Section 5. Anchorage Municipal Code section 29.10.060, Removal of members from office, is hereby amended as follows (the remainder of the section is not affected and therefore not set out):

29.10.060 - Removal of members from office.

A member of the school board may be removed from office for breach of the public trust following the procedures set forth in this section.

A. Willful and knowing breach of duty or culpable indifference to official duties may constitute a breach of the public trust. For the purposes of this section, actions constituting a breach of the public trust shall include, but are not limited to:

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9. Official oppression;
10. Actual or attempted official misconduct, as defined by state law;
11. Unexcused absence from three consecutive meetings;
12[11]. Failure to attend 75 percent of meetings in a 24-month period; or
13[12]. Substantial breach of a statutory-, Code- or Charter-imposed duty.

B. Proceedings for removal from office may only [SHALL] be initiated by delivery of an accusation document to the municipal clerk setting forth the grounds for removal and specifying if delivery is to the school board or the board of ethics. An accusation document may be submitted to municipal clerk only by a majority [TWO-THIRDS] vote of the school board or a [TWO-THIRDS MAJORITY] decision of the municipal board of ethics and must allege specific actions by the school board member in question which breach the public trust.

C. After a successful vote to submit it, the municipal clerk shall cause a copy of the accusation document to [MUST] be delivered by personal service to the members of the school board who are the subjects of
the accusation document and a copy delivered to the municipal attorney.

D. The municipal attorney shall review the accusation document for legal sufficiency. The municipal attorney shall determine the legal sufficiency of the allegations within ten days of receipt of the accusation document. If the municipal attorney determines that the allegations are legally insufficient, the removal action shall be discontinued. The municipal attorney's determination, if it rejects the accusation document, may be appealed to the superior court within 30 days. No interlocutory appeal is permitted from a determination by the municipal attorney that the accusation document is legally sufficient. Following a determination by the municipal attorney that the accusation document is legally sufficient, the school board shall employ an attorney of the accused's choice, subject to the limitations of this subsection, to defend the charges. The attorney selected must be engaged in the active practice of law in the state. The fees charged by the attorney must be reasonable in both the rate and the amount of time expended. Reasonableness shall be evaluated in accordance with Alaska Bar Rule 35 and shall be subject to fee arbitration under the Alaska Bar Rules if the school district disputes the reasonableness of the fees claimed.

E. Within two weeks following the service [DELIVERY] of an accusation document, the municipal clerk shall request six names be submitted as potential hearing officers by the American Arbitration Association. Three of the names submitted should be from the state and three from out of state. From these names the school board and the accused shall agree upon a hearing officer who shall conduct the hearing concerning the allegations in the accusation document. If [OR, IF] no agreement is reached within ten days of distribution of the list of potential hearing officers, the hearing officer shall be selected by each side exercising preemptory challenges to the six potential names in turn until only one remains [THE MUNICIPAL CLERK SHALL SELECT A HEARING OFFICER FROM THE LIST, WHO SHALL CONDUCT A HEARING CONCERNING THE ACCUSATIONS CONTAINED IN THE DOCUMENT FILED WITH THE MUNICIPAL CLERK AND SHALL PROVIDE A RECOMMENDATION TO THE SCHOOL BOARD]. If more than one school board member is the subject of the accusation document or the alleged breach arises out of the same event, the same hearing officer shall hear those matters and may hold one consolidated hearing.

F. A hearing conducted by an appointed hearing officer shall be held no later than 30 days following appointment of the hearing officer. The hearing shall be open to the public and, unless otherwise provided in
this section, shall be conducted in accordance with the procedures set forth in chapter 3.60, **however the hearing officer shall expedite the matter within the required times set forth in this section and chapter 3.60 and shall grant extensions only for good cause. Good cause must be based upon matters either beyond the control of the party making application or conditions which would create a significant hardship if a continuance is not granted.** Within ten days following the conclusion of the public hearing, the hearing officer shall submit written findings and recommendations to the school board. The recommendations shall include whether the official should be removed.

G. The standard of proof of the allegations in the accusation document to be applied by the hearing officer is proof by a preponderance of the evidence. The hearing officer shall evaluate the evidence relating to the accusations set forth in the accusation document and evaluate both whether the allegations are supported and whether those actions alleged constitute a breach of the public trust. Wrongful acts or admissions occurring while the officer was acting in a private capacity as opposed to his capacity as a public officer shall not constitute a breach of the public trust as set forth in subsection A of this section. **WILLFUL AND KNOWING BREACH OF DUTY OR CULPABLE INDIFFERENCE TO OFFICIAL DUTIES MAY CONSTITUTE A BREACH OF THE PUBLIC TRUST.**

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I. The decision of the school board acting upon the recommendations of the hearing officer may be appealed to the superior court within 30 days of the school board’s decision. If the school board’s decision is for removal, the office shall be considered vacant beginning at 12:01 a.m. seven days following the decision unless the appellate court issues a stay of the removal pending appeal. In evaluating whether to grant a stay of removal pending appeal the facts that the removed member could miss important votes or that another individual may be seated to replace the removed member shall not constitute irreparable harm. **During a stay, unless otherwise ordered by the court the seat is considered vacant and shall be filled in accordance with Charter 7.02(a) pending the outcome of the court case.** If, after exhaustion of appeals, the final ruling reverses the removal, the removed member shall be reseated for the remainder of the term for which elected, and any replacement, whether appointed or elected at a special election, shall be displaced.

(OAO No. 93-54(S-1), 5-5-93)

**Section 6.** This ordinance shall be effective immediately upon passage and approval by the Assembly.
PASSED AND APPROVED by the Anchorage Assembly this ______ day of ________________, 2022.

___________________________________  
Chair  

ATTEST:

______________________________  
Municipal Clerk
ASSEMBLY MEMORANDUM

No. AM 326-2022

Meeting Date: June 1, 2022

FROM: Assembly Vice Chair Constant

SUBJECT: AO 2022-60(S): AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE CHAPTERS 3.10 GENERAL PROVISIONS (RESERVED) AND 27.20 SUPERVISORY BOARDS, AND SECTIONS 2.70.030 AND 29.10.060, TO FULFILL THE REQUIREMENT OF ANCHORAGE MUNICIPAL CHARTER SECTION 7.01(b) THAT THE ASSEMBLY BY ORDINANCE MUST ESTABLISH SPECIFIC PROCEDURES FOR REMOVAL OF ELECTED OFFICIALS FOR BREACH OF THE PUBLIC TRUST.

The S-version makes some changes that improve the ordinance and the existing code sections for removal of elected Assembly and School Board members. The significant changes from the original Ordinance, and identical in each of the sections for each type of elected official, include:

- Moving the mental state element language—“[w]illful and knowing breach of duty or culpable indifference to official duties”—from the subsection establishing the standard of proof for the hearing officer to the first subsection that lists the actions which constitute grounds for a breach of the public trust accusation. This change improves Code integrity by setting forth the elements and grounds in one subsection, rather than buried later in the subsections outlining procedural steps. Assembly Counsel recommended this change. (p. 2 line 22; p. 4 line 44; p. 7 line 37; p. 10 line 24)

- Include the phrase “but are not limited to” as a lead-in to the list of actions that may constitute a breach of the public trust. Assembly Counsel advises that the real offense is the breach of the public trust and as a matter of law there may be other action not listed which may, based on precedent, common law, or the nature and severity of the action, be found by the hearing officer to also be a breach of the public trust although not listed. (p. 2 line 25; p. 5 line 2; p. 7 line 40; p. 10 line 27)

- Changes “shall be initiated” to “may only be initiated” to more accurately reflect that initiating a removal process is not a mandate, but rather that
there is only one way to initiate such process. (p. 2 line 43; p. 5 line 23; p. 8 line 6; p. 10 line 38)

- Includes language requiring the removal hearing process to be expedited and directing that the hearing officer only grant extensions of time for good cause. (p. 3 line 35; p. 6 line 31; p. 9 line 13; p. 12 line 5)

I request your support for S-version of the ordinance.

In addition, as pointed out at the work session held May 20, 2022, the list of actions constituting breach of the public trust for the mayor included “actual or attempted official misconduct” but such action was not listed in the current code sections for removal of an assembly member (AMC 2.70.030) or of a school board member (AMC 29.10.060). This offense is added to both those sections by the S-version. (p. 7 line 43; p. 10 line 30)

At the May 20 work session Assembly Members posed several questions to Assembly Counsel about legal aspects of the proposed ordinance and requested the legal definition of offenses iterated in the actions constituting grounds. Counsel will submit a separate memorandum responding to these concerns.

I request your support for the S-version of the ordinance.

Prepared by: Assembly Counsel’s Office
Respectfully submitted: Assembly Vice Chair Christopher Constant
District 1, Downtown Anchorage
FROM: Assembly Counsel

SUBJECT: RESPONSE TO LEGAL QUESTIONS RE: AO 2022-60(S), AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE CHAPTERS 3.10 GENERAL PROVISIONS (RESERVED) AND 27.20 SUPERVISORY BOARDS, AND SECTIONS 2.70.030 AND 29.10.060, TO FULFILL THE REQUIREMENT OF ANCHORAGE MUNICIPAL CHARTER SECTION 7.01(b) THAT THE ASSEMBLY BY ORDINANCE MUST ESTABLISH SPECIFIC PROCEDURES FOR REMOVAL OF ELECTED OFFICIALS FOR BREACH OF THE PUBLIC TRUST.

At the May 20, 2022 work session Assembly Members requested more information regarding the common law jurisprudence on removal of an elected official, and to provide the code or statute for the offenses listed as actions that constitute a breach of the public trust.

Common law jurisprudence on removal of an elected official. Assembly Counsel indicated at the work session that the attorney conducting a legal sufficiency review of the accusation (the first step after a vote to initiate proceedings), and any hearing officer presiding over the removal hearing, would recognize that as a matter of law it requires a high standard of proof of egregious conduct or serious pattern of conduct in order to find cause for removal. One of the initial steps in the legal sufficiency review by the municipal attorney or third-party attorney (subsection D. of each removal Code section) and for the hearing officer if the accusation proceeds further is to determine what the applicable legal standard is, and apply it to the facts alleged in the accusation, or as presented at the hearing as the case may be.

McQuillin: The Law of Municipal Corporations is one of the leading legal treatises on municipal law in the nation and provides the common law premise for Counsel’s statements at the work session. Although the law may vary among states and municipal jurisdictions, where removal of elected officials for cause is provided for, “there must be strong proof of willful and knowing wrongdoing.”

proceedings are deemed to be penal in nature, similar to criminal prosecutions, and are “to be strictly construed as in derogation of the common law.” Mere failure to perform just one duty required by law is not sufficient cause; there must be a general failure to perform the official duties alleged, or a general abandonment of office. A property or liberty interest in the position can be shown, so due process requires a hearing to determine whether there is cause.

If grounds are specified in the charter or law for removal, some states have held that no other grounds may be invoked, but is also usually left to the agency vested with removal power to determine what is sufficient cause. While this is not clearly settled in Alaska or Anchorage, Counsel’s sense is a court would not find itself limited to the listed grounds in the proposed ordinance if the alleged conduct satisfies the common law description of the types of conduct that provide sufficient cause for removal of an elected official. And, other law provisions exist where no list of grounds is provided so a hearing officer or court would need to determine if the alleged conduct satisfies the provided definition of “breach of the public trust.” For example, AMC section 4.05.065 applies for removal “for breach of the public trust” of a municipal board or commission member and does not have a list of specific actions, but describes that such actions “may include factors that materially and adversely affect the performance of the board or commission member or adversely affect the reputation or performance of the board or commission or the municipality.” This language or precedents before the Ethics Board may be useful reference for the initial sufficiency review and by the hearing officer in a proceeding under the provisions of this proposed ordinance. While the S-version includes the prefatory phrase “but are not limited to” so the list of actions is open-ended, removal of that phrase may not necessarily mean actionable grounds are limited to the list. That could become a legal argument to make in proceedings if the phrase is omitted: whether the list is definitive and closed, or merely illustrative.

“Sufficient cause” in the removal context means “legal cause as distinguished from discretion, and is a cause which specifically relates to and affects the proper administration of the office involved.” The cause must not be

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2 Id.

3 Id.


5 AMC subsection 4.05.065A.1. states:
A. A member of a board or commission may be removed from service for breach of the public trust following the procedures set forth in this section:

1. For purposes of this section, actions constituting a breach of the public trust may include factors that materially and adversely affect the performance of the board or commission member or adversely affect the reputation or performance of the board or commission or the municipality.
...mere whim or subterfuge, or indefinite as to time, place or nature, or remote or indirect, but must be of substance, relating to the character, neglect of duty, or fitness of the person removed. It must be reasonable. If the cause assigned is a reasonable one, then the question whether there is sufficient basis to suspend or remove is for the administrative agency; whether the assigned cause, of itself, constitutes a proper ground for removal or suspension is for the court to determine.

It is obvious that mere political bias or personal dislike of the officer having the power of removal is not a cause. It has been declared, however, that a municipal executive officer or executive board upon whom alone the removal power has been conferred is not prevented by reason of bias or prejudice from removing anyone whose conduct has merited his severance from public service.

Elected municipal officers may be removed from office only upon a showing of perverseness amounting to criminality or culpable indifference to official duties. In addition, particular acts of usurpation of power on the part of the mayor, which have no legal effect on the affairs of the city, are ordinarily not sufficient grounds for removal.

To warrant removal of a public officer for a town or village for unscrupulous conduct, gross dereliction of duty, or conduct that connotes a pattern of misconduct and abuse of authority, an official's misconduct must amount to more than minor violations and must consist of self-dealing, corrupt activities, conflict of interest, moral turpitude, intentional wrongdoing, or violation of a public trust.7

In 1975 when crafting Charter § 7.01, the Anchorage Charter Commission discussed the importance of the removal process having a “for cause” or reasonable cause element, and appeared to settle on “breach of the public trust” language to prevent arbitrary reasons for removal and to require sufficient cause.8 Municipal Attorney Richard Garnett opined that an attempted arbitrary removal would be a violation of basic due process.9 The inclusion of the mental state language “[w]illful and knowing breach of duty or culpable indifference to official

6  Id.
7  Id. (internal footnotes and citations omitted).
9  Anchorage Charter Comm’n, July 18, 1975 at 30 (p. 5283 of 6285), attached hereto.
duties” in the 1993 ordinance for the assembly and school board member removal tracks this due process concern of using minor violations, by requiring proof of such mental state by a preponderance of the evidence. The proposed ordinance carries the same standard forward to the new sections for the mayor and service area board members.

**Inclusion of the mayor in “elected official” removal.** The Charter Commission also discussed how the vacancies provisions would be organized, determining a single Charter section could cover it for “the mayor, the school board, and the assembly” and clearly deciding towards the conclusion of the Commission’s work that the removal of the mayor would be included in the term “elected official.” Overall, while other jurisdictions may not have provided the legislative branch or municipal government the ability to remove a mayor for cause, the Charter Commission included that authority and the voters eventually approved.

**Definitions of the listed actions constituting grounds for removal.** Another request at the May 20 work session is for the statute or Code definitions of the offenses listed as actions constituting grounds for removal. The list of actions was first created by Assembly Member John Wood’s submission of AO 93-54(S), and his attached statements in AM 426-93 merely stated:

> AO 93-54(S), like AO 93-54, would implement Charter Section 7.01 and establish a clear procedure for the removal of an assembly member or school board member from office for breach of the public trust. AO 93-54(S) differs in that it defines what actions will constitute a breach of the public trust.

The Administration at the time submitted AM 427-93 which concurred with AO 93-54(S) and stated in relevant part: “AO 92-54(S) [stet] is the preferred version due to the fact that it lists specific items which will constitute a breach of the public trust.”

The implication is the 1993 Assembly was uncertain about merely resting on the language “breach of the public trust” and desired a list of actions to define it. Without legislative history to more specifically refer to statute or ordinances existing at that time that define each of the listed actions, Counsel can only speculate based on current statutes and research but cannot guarantee the below are the precise definitions of the actions the 1993 body intended. The use of “public

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11 Anchorage Charter Comm’n, June 26, 1975 at 51-53 (pp. 4494-4496 of 6285), attached hereto, (discussing Committee Report No. 9’s recommendation to combine vacancy and removal provisions of the mayor, school board, and assembly and put in one place, with removal of an “elected official” for breach of the public trust and the safeguards required for how to proceed placed in subsection (b)).
trust” in other provisions of the Code, in state law, and in other jurisdictions may provide persuasive argument for how to interpret and apply the standard and the listed grounds in a specific case.

That said, provided below from the list in new section 3.10.050A. is each action with Counsel’s remarks or reference to the law it most closely incorporates:

1. Acceptance of cash gifts from one doing business with the municipality; - This is action most similar to the elements of Receiving unlawful gratuities, AS 11.56.120, a class A misdemeanor, or Receiving a bribe, AS 11.56.110, a class B felony. Anchorage’s Ethics Code prohibits accepting a gift valued over $50, and includes supplemental rules for elected officials giving consideration to campaign contributions that are properly reported and sponsor-provided cost coverage for events related to government business. AMC subsection 1.15.050F. reserves review by the Ethics Board or municipal ethics officer to “approve a gift which is consistent with the public policy concerns underlying limitations on gifts to public servants (influence, appearance of influence, conflict of interest, public trust).” (emphasis added).

2. Violation of chapter 1.15; - this incorporates by reference the Ethics Code, AMC chapter 1.15. It is too lengthy for reprinting here.

3. Perjury; - this is defined at AS 11.56.200 and is a class B felony.

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12 See AMC section 4.05.065A., supra n. 5.
13 AS § 11.56.120. Receiving unlawful gratuities.
(a) A public servant commits the crime of receiving unlawful gratuities if, for having engaged in an official act which was required or authorized and for which the public servant was not entitled to any special or additional compensation, the public servant
(1) solicits a benefit, regardless of value; or
(2) accepts or agrees to accept a benefit having a value of $50 or more.

14 AS § 11.56.110. Receiving a bribe.
(a) A public servant commits the crime of receiving a bribe if the public servant
(1) solicits a benefit with the intent that the public servant's vote, opinion, judgment, action, decision, or exercise of discretion as a public servant will be influenced; or
(2) accepts or agrees to accept a benefit upon an agreement or understanding that the public servant's vote, opinion, judgment, action, decision, or exercise of discretion as a public servant will be influenced.

(a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.
(b) In a prosecution under this section, it is not a defense that
(1) the statement was inadmissible under the rules of evidence; or
(2) the oath or affirmation was taken or administered in an irregular manner.
4. **Falsification of records:** There are several state criminal offenses related to falsifying records, which may be applicable depending on the facts and context. AS 11.56.820, Tampering with public records in the second degree, is a class A misdemeanor and a good example. Also possibly within this category is AS 11.56.815, Tampering with public records in the first degree (with a specific mental state element and for certain contexts); AS 11.56.505 Forgery, AS 11.56.550 Offering a false instrument for recording, AS 11.56.630 Falsifying business records.

5. **Filing false reports:** May be referring to AS 11.56.800, False information or report, a class A misdemeanor, or the nearly identical municipal offense in AMC section 8.30.020, False information or report, also a class A misdemeanor.

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16 AS § 11.56.820. Tampering with public records in the second degree.

(a) A person commits the crime of tampering with public records in the second degree if the person

(1) knowingly makes a false entry in or falsely alters a public record;

(2) knowingly destroys, mutilates, suppresses, conceals, removes, or otherwise impairs the verity, legibility, or availability of a public record, knowing that the person lacks the authority to do so; or

(3) certifies a public record setting out a claim against a government agency, or the property of a government agency, with reckless disregard of whether the claim is lawful, or that payment of the claim is not authorized in the budget of the government agency.

(b) In this section,

(1) “certifies” means attesting to the existence, truth, or accuracy of facts, or that one holds an opinion, stated in a public record; the term includes the responsibilities for state officials set out in AS 37.10.030;

(2) “falsely alters” has the meaning ascribed to it in AS 11.46.580; and

(3) “makes a false entry” means to change or create a public record, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or by any other means, so that the record so changed or created states or implies a fact that the maker knows is not true, or states or implies an opinion that the maker does not hold.

(c) Tampering with public records in the second degree is a class A misdemeanor.

17 AS § 11.56.800. False information or report.

(a) A person commits the crime of false information or report if the person knowingly

(1) gives false information to a peace officer

(A) with the intent of implicating another in an offense; or

(B) concerning the person's identity while the person is

(i) under arrest, detention, or investigation for a crime; or

(ii) being served with an arrest warrant or being issued a citation;

(2) makes a false report to a peace officer that a crime has occurred or is about to occur;

(3) makes a false report or gives a false alarm, under circumstances not amounting to terroristic threatening in the second degree under AS 11.56.810, that a fire or other incident dangerous to life or property calling for an emergency response has occurred or is about to occur;

(4) makes a false report to the Department of Natural Resources under AS 46.17 concerning the condition of a dam or reservoir; or

(5) gives false information to a public employee relating to a person's eligibility for a permanent fund dividend under AS 43.23 and the false information does not also violate AS 11.56.205.

18 AMC 8.30.020 - False information or report.

A. person commits the crime of false information or report if the person knowingly:

1. Gives false information to a peace officer:
   a. With the intent of implicating another person in an offense; or
6. Nepotism: - this is making a hiring decision based on kinship with the hired employee. It is codified in AMC section 3.30.168, Employment of relatives, which allows an employee's relative to be hired and their performance reviewed, but with prohibitions and safeguards in place. The comparable state statute AS

b. Concerning the person's identity while the person:
   i. Is under arrest, detention or investigation for a crime; or
   ii. Has an outstanding arrest warrant or is being issued a citation;
2. Makes a false report to a peace officer that a crime has occurred or is about to occur; or
3. Makes a false report or gives a false alarm that a fire or other incident dangerous to life or property calling for an emergency response has occurred or is about to occur.

AMC 3.30.168 - Employment of relatives, states in pertinent part:

B. Policy. Except as otherwise provided in this section, an applicant who is otherwise qualified may not be denied appointment to a municipal position or continued employment with the municipality because the applicant's primary or secondary relative is employed by the municipality.

C. Management.
   1. Employment decisions.
      a. A related employee may not participate in a decision involving a primary or secondary relative.
      b. A related employee may not participate in a decision if a related employee is a decision maker.
      c. The director shall participate in a decision involving a primary relative of the agency head. The final decision requires approval of the director.
      d. The director's approval shall be required in a final employment decision involving a secondary relative of the agency head.
   2. Performance decisions.
      a. For purposes of this subsection, participation shall include (i) when the primary or secondary relative is the subject of the performance decision, or (ii) when the primary or secondary relative is a witness in a performance decision.
      b. A related employee may not participate in a decision involving a primary or secondary relative.
      c. A related employee may not participate in a decision if a related employee is a decision maker.
      d. The director shall participate in a final performance decision involving a primary relative of the agency head. The final decision shall require the approval of the director.
      e. The director's approval shall be required in a performance decision involving a secondary relative of the agency head.
      f. In a performance decision involving a law enforcement investigation, the senior employee shall not participate in the investigative process, including:
         (1) The decision to initiate an investigation;
         (2) Management oversight of the investigation;
         (3) Determination of findings;
         (4) Participation in disciplinary hearings including Loudermill or other proceedings under AMC 3.30; and
         (5) The final decision shall be made by the agency head, or if the agency head is the related relative, by another employee higher than the agency head in the chain of command established by Chapters 3.20 and 3.30.
   3. Supervision.
      a. There may not be less than two intermediate supervisors between a senior employee and a subordinate employee, whether primary or secondary relatives.
      b. Current relative employee relationships that would be prohibited under subsection 3.a are grandfathered; however, related employees must meet the requirements of subsection 3.a. for a new assignment, appointment, or position.
4. Temporary appointment, assignment, or continued employment.
39.90.020 prohibits nepotism but is made specifically applicable to state employment. It may be a persuasive legal resource.

7. Making personal use of municipal or school district property; - this is an offense in the Ethics Code, at AMC section 1.15.040, Use of municipal resources.\(^{20}\)

8. Destruction of municipal or school district property; - this is self-explanatory, and is comparable to the crimes of criminal mischief which has five degrees of severity to the offense. AMC section 8.20.010, Criminal mischief,\(^{21}\) is

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a. The director may authorize in writing a temporary appointment or assignment to or continued employment in a position directly supervised by a relative, if the director finds the appointment, assignment, or continued employment is of short duration and no reasonable alternative is available.

5. Management of conflicts....

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\(^{20}\) AMC 1.15.040 - Use of municipal resources.
A. Municipal resources include, but are not limited to funds, facilities, tools, equipment, vehicles, property, consumable resources, and employees and employee time. Municipal resources shall be used for municipal public purposes, which shall be defined to include:
1. The performance of municipal duties, including educational and outreach programs;
2. Occasional and limited use of municipal resources for community service or charitable fundraising purposes if duly authorized by the chair of the assembly, the mayor, or the mayor's designee;
3. Use of municipal resources as further addressed in the mayoral directives (policies and procedures), as well as an annual umbrella charitable fundraising program designated by the mayor for participation by public servants.

B. De minimus personal use of municipal resources is permitted and is defined as use that is infrequent or occasional and that results in little or no actual cost to the municipality. No personal use, however, may be for political activities, lobbying, or outside business interests.

C. Except to the extent the general public has the same access to or as otherwise authorized, a municipal employee shall not use facilities, equipment, data, or supplies of the municipality to support an employee's personal endeavors, including contemporaneous service or employment.

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\(^{21}\) 8.20.010 - Criminal mischief.
A. It is unlawful for any person, having no right to do so or any reasonable ground to believe the person has such a right, to:
1. Damage property of another in an amount of $50.00 or more; or
2. Tamper with a fire protection device in a building that is in a public place; or
3. Knowingly access a computer, computer system, computer program, computer network, or part of a computer system or network; or
4. Uses a device to descramble an electronic signal that has been scrambled to prevent unauthorized receipt or viewing of the signal unless the device is used only to descramble signals received directly from a satellite or unless the person owned the device before September 18, 1984; or
5. Knowingly remove, relocate, deface, alter, obscure, shoot at, destroy, or otherwise tamper with an official traffic control device or damage the work upon a highway under construction; or
6. With reckless disregard for the risk of harm to or loss of the property or with intent to cause substantial inconvenience to another, tamper with the property of another; or
7. Damage property of another in an amount of less than $50.00; or
8. Ride in a propelled vehicle with criminal negligence that it has been stolen or that it is being used in violation of AS 11.46.360 or AS 11.46.365(a)(1).

B. Violation of subsections A.1. through A.5. above is a class A misdemeanor.
C. Violation of subsections A.6. through A.8. above is a class B misdemeanor.
representative of the elements of such an offense. In our Code it is a class A or B misdemeanor depending on the mental state of the offender and degree and type of damage or destruction.

9. **Official oppression:** - This is a common law offense that, according to a American Law Reports treatise section, encompasses extortion as well as a public official under color of authority of his office and with improper motive inflicting physical harm on a person.\(^2\)

10. **Actual or attempted official misconduct, as defined by state law:** - this was provided in AM 278-2022 submitted with the original proposed ordinance.

11. **Ordering, or knowingly allowing a person appointed by the mayor to order, a municipal employee to undertake an unlawful act:** - this means what it says and will depend on what unlawful act is at issue in the accusation document that initiates the proceedings. There would need to be a finding of the mayor’s mental state and action, or knowledge of a subordinate’s action and allowing it.

12. **Substantial breach of a statutory-, Code- or Charter-imposed duty:** - Similar to #11, this is plain language that will depend on the duty alleged to have been breached as detailed in the accusation document. As noted in the *McQuillin* treatise, a single breach of a simple duty is not sufficient, thus this requires the breach to be “substantial.” Black’s Law Dictionary (11th Ed. 2019) has a multitude of definitions, most relevant in this context are: “… 2. Real and not imaginary; having actual, not fictitious, existence. 3. Important, essential, and material; of real worth and importance. … 6. Considerable in extent, amount, or value; large in volume or number. 7. Having permanence or near-permanence; long-lasting …”

13. **Failure to faithfully execute the directives of a duly enacted ordinance.** - This refers to the mayor’s overall duty as the head of the executive branch, incorporating the separation of powers doctrine and its description of the duty and responsibility of the executive power. It relates to the oath of office taken by the

\(^2\) 83 A.L.R.2d 1007, *What constitutes offense of official oppression*, (Originally published in 1962), states in relevant part:

The common-law crime, in general, consists in the inflicting upon any person, from an improper motive, of any illegal bodily harm, imprisonment, or any injury other than extortion, by a public officer while exercising, or under color of exercising, his office. 10 Halsbury’s L of Engl 3d ed p 615. The crime has also been defined as the abuse of any discretionary power invested by law in a public officer committed in the exercise of, or under color of exercising, the duties of his office with an improper motive. 2 Wharton, Criminal Law 12th ed § 1898.

It should be noted that the common-law crime of extortion, that is, the taking of money or other valuable thing when it is not due, by a public officer acting under color of his office and with an improper motive\(^1\) is embraced by the wording of many of the statutory definitions of official oppression;\(^2\) therefore, the taking of money or property illegally by a public officer acting under color of his office has in some instances been held to be official oppression.
mayor, to “faithfully perform the duties of [mayor] to the best of my ability.” The U.S. and Alaska Constitutions both contain a “faithful execution” clause for the President and Governor, respectively. One legal scholar engaged in a historical analysis prefacing and leading to the framers crafting that clause in Article II of the federal constitution and concluded there are three core meanings behind it: to prevent ultra vires acts and keep presidential action within his authorization, to proscribe self-dealing and demand the president “act for reasons associated primarily with the public interest rather than [] self-interest,” and an affirmative command to act diligence, care and good faith to pursue what is in the best interest of the constituency. Some of the historical examples reviewed involved impeachments and “reflect a public trust theory of impeachment, in which acting contrary to oath, duty, and office are key elements.” As used in this section of the proposed ordinance, the clause is specific to executing directives in an ordinance passed by the Assembly. Again, turning to common law jurisprudence for removal, if the allegations against the mayor are failure to carry out political or discretionary actions directed by ordinance, such a complaint is unlikely to pass the initial legal sufficiency review, or the hearing officer’s determinations as a matter of law. And, the mental state elements apply, so a mayor’s good faith refusal to take an action directed in an ordinance because there are, in fact, reasonable grounds for such refusal means the allegation is unlikely to pass muster in a removal proceeding. This phrase, however, supports the validity of a removal proceeding if the allegations and facts demonstrate the mayor’s willful and knowing refusal to carry out a directive-that is not directing a political or discretionary action- in an ordinance, or culpable indifference to that directive. Would a single instance suffice? The common law in this area discussed in the first part of this memorandum suggests the answer is “no,” and a pattern or repeated instances of failure to execute an ordinance’s directives within the legislative power to so direct, shown by a preponderance of the evidence, may be necessary for a successful removal action.

The main point to bear in mind is that “breach of the public trust” is to be interpreted in light of the common law and precedents whether in Alaska or other jurisdictions related to the removal of a public elected official. With the requirement to prove a mental state element, it is a high bar and cannot be arbitrarily based on minor violations, isolated missteps, discretionary actions, or political differences. But it is not a bar set as high as a criminal proceeding, the standard of proof in the current Code and the new sections proposed by the ordinance is a “preponderance of the

26 Id. at 2171.
27 For example, the power of appointment of department heads is vested in the mayor and a clear executive function. If the Assembly passed an ordinance directing the mayor to appoint John Smith to head a certain department, and the Mayor does not and appoints someone else, that would not provide sufficient grounds for removal under subsection 13.
evidence," and not the "proof beyond a reasonable doubt" standard in criminal law. The foregoing explanation of the actions listed are not intended to be comprehensive or absolute, they are demonstrative of the complexity of the process for removal and an effort to iterate some statutory and common law offenses that are encompassed by the phrase "breach of the public trust."

No state law preemption. Another legal point that has been asked is whether enacting this removal process is preempted by state statute. Section 3 of the proposed ordinance for a process for mayoral removal is clearly different than AS 29.20.280(a), the comparable state statute:

(a) The governing body shall, by two-thirds concurring vote, declare the office of mayor vacant only when the person elected
(1) fails to qualify or take office within 30 days after election or appointment;
(2) unless excused by the governing body, is physically absent for 90 consecutive days;
(3) resigns and the resignation is accepted;
(4) is physically or mentally unable to perform the duties of office;
(5) is convicted of a felony or of an offense involving a violation of the oath of office;
(6) is convicted of a felony or misdemeanor described in AS 15.56;
(7) is convicted of a violation of AS 15.13;
(8) no longer physically resides in the municipality; or
(9) if a member of the governing body in a second class city, misses three consecutive regular meetings and is not excused.

This provision of Title 29, Municipal Government, is not a prohibition on a home rule municipality from enacting an ordinance that approaches declaring a vacancy in the mayor’s office, including by removal, differently. AS 29.10.200 identifies the specific sections of Title 29 that “apply to home rule municipalities as prohibitions on acting otherwise than as provided.” AS 29.20.280 is not in the listed sections. Therefore, as a home rule municipality the MOA is not preempted from enacting the proposed ordinance.

28 AS 29.10.200 lists sections of Title 29 in numerical order, and AS 29.20.280, if it were included, would be between subsections (15) and (16):
(13) AS 29.20.150 (term of office);
(14) AS 29.20.220 (executive power);
(15) AS 29.20.270(e) (ordinance veto by mayor);
(16) AS 29.20.630 (prohibited discrimination);
Assembly Members may contact me with any further legal questions or concerns.

Respectfully submitted: Dean T. Gates, Assembly Counsel

Attachments: Excerpts from Anchorage Charter Commission meeting transcripts:
  • May 8, 1975, pages 38-42.
  • June 26, 1975, pages 51-53.
  • July 18, 1975, pages 27-35.
ANCHORAGE CHARTER COMMISSION MEETING

ALASKA METHODIST UNIVERSITY

DATE: May 8, 1975
(Evening meeting)

Members present:
Fred Chiei, Vice Chairman
Jane Angvik
Dick Fischer
Mary Frohne
Shari Holmes
Lisa Parker
Jim Parsons
Arliss Sturgulewski
Rick Garnett, Attorney
Evy Walters, Executive Secretary

Members Absent:
Frank Reed, Chairman
William Sheffield
Joe Josephson

Others Present:
Margaret Schmidt
Jan Hansen
Randy Johnson
Millet Keller

Hearing opened at 7:30 p.m.
MR. GARNETT: Yeah.

MS. STURGULEWSKI: Question.

MR. CHIEI: The question has been called.

(Simultaneous speech)

MR. CHIEI: Is there anyone opposed to the motion?

Motion’s carried.

MS. HOLMES: Mr. Chairman, the insertion of -- in line six beginning with vacancies, that sentence is something that we had inadvertently omitted from the school section. I would move inclusion of that sentence.

MS. STURGULEWSKI: Second.

MR. CHIEI: State the motion again, Shari.

MS. HOLMES: The sentence that you see in your (indiscernible) vacancies in the school board shall be filled in the manner provided for vacancies under the assembly was inadvertently omitted from the school section and we’d have to (indiscernible). I would therefore move for its inclusion.

MR. CHIEI: All right, it’s been seconded by Arliss. Is there any discussion by the Commission on it?

MS. STURGULEWSKI: Question.

MR. FISCHER: Yeah, Mr. Chairman?

(Simultaneous speech)

MR. FISCHER: I can’t remember how vacancies are provided by (indiscernible).
(Simultaneous speech)

MR. FISCHER: Page four?

MR. GARNETT: Yes, at 3.05.

(Simultaneous speech)

MR. FISCHER: What do we do, Mr. Chairman, with the last sentence of that?

MR. CHIEI: The last sentence of which?

MR. FISCHER: Well, the -- if we’re doing it the same way as we’re doing it by the assembly, it says that the assembly member shall be reduced to fewer than six members and the remaining members should be filled by vacancies (indiscernible). And then (indiscernible) seven days.

MS. FROHNE: Mr. Chairman?

MR. CHIEI: Mary?

MS. FROHNE: In as much as it is a different number, I guess we shouldn’t reuse the reference, but have Rick fill in a similar wording with a majority of five being the number.

MR. PARSONS: I would so move, Mr. Chairman. What we’re doing (indiscernible).

MR. FISCHER: Mr. Chairman?

MS. FROHNE: I’ll second it.

MR. CHIEI: Now wait a minute, wait a minute. It’s been moved (indiscernible).

(Simultaneous speech)
MR. GARNETT: No, there was an order, there was a motion before us.

(Simultaneous speech)

MS. FROHNE: May we substitute motion rather than original motion with this?

MR. FISCHER: Mr. Chairman, I would move that a substitute motion to the one before us for Mr. Garnett to draw up an article to -- the wording to include here similar to the assembly (indiscernible) number being five.

MR. CHIEI: Does that have the second by Mary?

MS. FROHNE: Yes.

MR. CHIEI: Mary, did you second that?

MS. FROHNE: I did.

MR. CHIEI: Discussion, Lisa?

MS. PARKER: (Indiscernible) vacancy and.....

(End of side A)

MS. STURGULEWSKI: Mr. Chairman, we had on this particular one, discussed, I thought earlier, and that’s probably why it is not in the school session, that we wanted a section drawn up that would cover this matter for the -- I thought the Mayor, the school board and the assembly.

MR. GARNETT: We did it for the Mayor, we didn’t do it for the school board.

MS. STURGULEWSKI: We did it for the Mayor and we did it for the assembly in their sections, did we not?
MR. GARNETT: Right, yes.

MS. STURGULEWSKI: Well, then I think this is what we’re saying and is an appropriate method to follow is we’ll have to be self standing here then. Can we do that, require by ordinance by the assembly?

MR. GARNETT: I suppose so. I don’t -- another way you can say -- or preempt just on the matter of determining vacancies on (indiscernible).

MR. FISCHER: Well, the ’71 charter indicated vacancies of the office of school board members shall be determined as provided by ordinance.

MS. HOLMES: So we can reconcile, Mr. Chairman, we can reconcile the school language to follow the assembly language except with the (indiscernible).

MR. GARNETT: (Indiscernible) yeah.

MS. HOLMES: And including the (indiscernible).

MS. STURGULEWSKI: Uh-huh.

MR. GARNETT: Evy, why don’t you do that in full or by the use of the phrase such as vacancies on the school board shall be determined and filled and then vacancies on (indiscernible).

MS. HOLMES: I think it would be more proper, from my point of view, to include the whole thing.

MAN 1: Here.

MS. FROHNE: We -- we’re trying to avoid references
where we can.

MS. HOLMES: I would withdraw my original motion then to include a sentence on vacancies.

MR. CHIEI: Wait a minute now, I’m.....

(Simultaneous speech)

MR. CHIEI: There’s a substitute motion on the table (indiscernible) and we’re discussing that motion. Any further discussion on Jim’s motion? If not, we’ll call for the question.

MR. FISCHER: Question.

MS. ANGVIK: In relation to Lisa’s point, will we also then include a section on determining vacancies along with following your suggestion?

MR. FISCHER: I would think so.

MS. STURGULEWSKI: I thought that was your intent.

MS. FROHNE: I think that’s the intent.

MS. STURGULEWSKI: It would, it would take care of that.

MS. ANGVIK: Just the whole ball of wax for this to (indiscernible) to the others.

MS. STURGULEWSKI: Right.

MS. ANGVIK: All right.

(Simultaneous speech)

MS. ANGVIK: I just wanted to make sure that’s what we were doing.
ANCHORAGE CHARTER COMMISSION MEETING

COMMISSION OFFICE

DATE: June 26, 1975

Members present: Frank Reed, Chairman
Lisa Parker
Joe Josephson
Jane Angvik
Mary Frohne
William Sheffield
Shari Holmes
Fred Chiei
Jim Parsons
Rick Garnett, Attorney
Pat Parnell, Executive Director

Members absent: Dick Fischer
Arliss Sturgulewski

Others present: John Parks
Mike Rose
Mike Rowan
Carl Whitson
Judy Whitson
Walt Parker
Pat Parker

Hearing opened at 7:30 p.m.
MR. CHIEI: Yeah.

MR. REED: Motion by Chiei, seconded by Holmes for the adoption of the Committee Report number 8.

MR. CHIEI: I make a move we don’t (indiscernible) for the Borough.

MR. REED: If there are no -- all those in favor?

ALL: Aye.

MR. REED: Those opposed? Hearing no opposition, Committee Report number 8 (indiscernible - simultaneous speech).

MR. CHIEI: For the (indiscernible - simultaneous speech).

(Simultaneous speech)

MR. REED: And the secretary instructed to cast a unanimous vote.

(Simultaneous speech)

MR. CHIEI: The city should be investigated also.

MS. FROHNE: The city did it first and then the legislature did it and then (indiscernible).

MR. REED: Now (indiscernible - voice lowered).

(Simultaneous speech)

MR. JOSEPHSON: Okay, on number 9, there are a couple things. In the original first draft Charter, Mr. Chairman, vacancies are treated in different articles. There’s a vacancy provision under Article III for the Assembly.
There’s a vacancy provision under the Mayor, there’s a vacancy provision under the School Board. And they’re very broad, they simply say, for example, in terms of the Office of the Mayor, that the Assembly, by ordinance, shall adopt standards and procedures for removal of the Mayor from office. The philosophy of Committee Report number 9 is to collect all the vacancy material into one place and to set out some specific criteria, specific causes where a vacancy would exist. The only one which is not clear or not definite is breach of the public trust, case number six.

Subsection (b), however, provides safeguards on that question as to how to proceed to remove an elected official for the breach of the public trust would be initiated and provides for notice, statements of charges and public hearing within impartial person and that the removal would be accomplished only by extraordinary two-thirds vote.

The matter of filling vacancies has changed by making sure -- and this was Mayor Sullivan’s suggestion that the -- that if a person is appointed to fill a vacancy, that he’s qualified, meaning that he has the same Charter qualifications as he would have had to have if he had stood for election.

I don’t know if any member of the Committee wants to add something to that or Mr. Garnett?

MR. GARNETT: (Indiscernible) Mr. Chairman, except
that in terms of length, we save four or five areas, substantial sections (indiscernible) on the words of (indiscernible).

MR. CHIEI: I’ll move for its adoption.

MR. SHEFFIELD: Second.

MR. REED: Moved by Mr. Chiei, seconded by Mr. Sheffield, adoption of Committee Report number 9.

MS. ANGVIK: Mr. Chairman?

MR. REED: Ms. Angvik.

MS. ANGVIK: I just have to point out to everybody who wasn’t there at that meeting that when section (a) in the filling of vacancies, we talked about if, in an extraordinary situation, that the number of members on the Assembly should be reduced to less than a quorum if they all get killed in a plane accident, that you fill, by appointment, up to quorum and then you -- so that you can conduct business, this section. And then the remaining vacancies will be filled by that group and then (indiscernible) but that you immediately fill (indiscernible - mic noise) within seven days.

MR. REED: Any other discussion? Lisa?

MS. PARKER: Go ahead.

MR. GARNETT: Well, Lisa pointed out, correct me, that we’ll have to change the reference to paragraph (a) of this section. The reason we’re vacant on section numbers and so
ANCHORAGE CHARTER COMMISSION MEETING

DATE: July 18, 1975

Members present: Frank Reed, Chairman
                Jim Parsons
                Mary Frohne
                Joe Josephson
                Fred Chiei
                Arliss Sturgulewski
                Jane Angvik
                Lisa Parker
                Rick Garnett, Attorney
                Pat Parnell, Executive Director
                Patti Zantek, Executive Secretary

Other persons present: Ken Spray, Alaska Public Employees
                       Association
                       Jim Babb, Anchorage Daily News
                       Don Sherwood, Bargaining Team, APEA
would certainly be one of the major rights. That -- that
gets into a legislative thing. We're not trusting our other
body if we don't.....

MR. REED: Is there any further discussion regarding
the amendment?

MS. STURGULEWSKI: Question.

MS. FROHNE: This improves it a whole lot.

MR. REED: That question's been called. All those in
favor?

All: Aye.

MR. REED: Those opposed?

(No audible response)

MR. REED: Hearing no opposition, it's unanimous.

MS. STURGULEWSKI: Mr. Chairman, two little nit-
pickings, is 12, is proceedings not.....

MR. REED: Yeah.

UNIDENTIFIED FEMALE SPEAKER: Should be
(indiscernible).....

MS. STURGULEWSKI: Okay, and down in line 22, a comma
after School Board.

MS. FROHNE: Mr. Chairman.

MR. REED: Mary.

MS. FROHNE: I would like to add on line 19, “or
School Board, as the case may be, on the basis of facts
found.” In other words, they would have to -- the facts
were proved in a judicial review, the Assembly's action or
the School Board's action would have to be on the basis of
the facts found, and not on an arbitrary basis.

MS. STURGULEWSKI: Well, Mr. Chairman.

MR. REED: Arliss.

MS. STURGULEWSKI: Mary, what have we said up above?
I don't understand. Don't you read that in context?

MS. FROHNE: Well,.....

MR. REED: Well, this is (indiscernible).....

MS. FROHNE: I don't believe that is more than a
(indiscernible) unless we do add a phrase.

MS. STURGULEWSKI: I don't.

UNIDENTIFIED MALE SPEAKER: (Indiscernible).

MS. FROHNE: It says, "removal must -- must be
approved by 2/3 of the authorized membership, as the case
may be....."

MS. STURGULEWSKI: But it states what removal is.

MR. REED: Well, Mary -- Mary, doesn't this actually
state -- state that the -- the conditions of removal in
effect for a breach of public (indiscernible).....

UNIDENTIFIED MALE SPEAKER: Yes.

MS. FROHNE: It says the procedures to go through.

UNIDENTIFIED MALE SPEAKER: They're all through here
and (indiscernible).....

MS. FROHNE: It says, "procedures to go through,"

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which supposedly are determining the facts, but.....

(Simultaneous speech)

MS. FROHNE: I want to be darn sure that this last sentence means that their action has to be on the basis of the facts found in the judicial review, you know, in the whole proceeding above.

(Simultaneous speech)

MS. STURGULEWSKI: To me, I don't have any, you know,.....

UNIDENTIFIED MALE SPEAKER: I think it's very

(indiscernible).....

(Simultaneous speech)

MR. REED: I don't have any qualms about the Assembly having.....

MS. FROHNE: Doing those things, that's why it

(indiscernible).....

MR. REED: .....having that much sense, that they're going to be based on the fact found anyway, and if they aren't, they've probably got adequate underlying reasons. I mean, if (indiscernible).....

MS. ANGVIK: Whether they're adequate or not, they wouldn't (indiscernible).....

MR. JOSEPHSON: Mr. Chairman, Rick, when you wrote down this casual phrase, as the case may be, what did you have in mind?
MR. GARNETT: Well, I had in mind designating the Assembly or the School Board,.....

MR. REED: The Assembly or the School Board.....

MR. GARNETT: .....depending on whether it was an assemblyman or a School Board member who was being removed.

(Simultaneous speech)

MR. REED: That only refers to whether it's an assemblyman or a School Board member.

MR. GARNETT: Now, on the case issue (indiscernible).

MS. FROHNE: In other words, each legislative body would be the (indiscernible).....

MR. GARNETT: Yeah.

MR. REED: Yeah, right.

MS. FROHNE: .....its membership.

MR. REED: That's right.

MR. GARNETT: You know, I don't know, Joe, it seems to me that the concept of removing a person from office would include, by its nature, the idea of cause or reasonable cause and.....

(Simultaneous speech)

MR. GARNETT: And if it were arbitrary, if an arbitrary removal were attempted, I think it would be a violation of basic due process and (indiscernible).

MS. FROHNE: If you're sure that would apply, I will not try to add wording.
MR. JOSEPHSON: Well, Mr. Chairman.

MR. REED: Mr. Josephson.

MR. JOSEPHSON: It must be for breach of the public trust.

MR. GARNETT: Yes.

MS. STURGULEWSKI: Sure.

MR. JOSEPHSON: It can't be because someone doesn't like the.....

MS. STURGULEWSKI: (Indiscernible).

MS. FROHNE: Well, I wasn't so much fearful that they.....

(Simultaneous speech)

MS. FROHNE: .....fearful that (indiscernible).....

(Simultaneous speech)

MS. FROHNE: .....unduly removed, but I would be more fearful that they would leave them in, in spite of cause.

UNIDENTIFIED MALE SPEAKER: I see.

MR. REED: Is there any further discussion?

MS. FROHNE: Because they were part of the body.

MS. STURGULEWSKI: Call for the question on item seven.

MS. FROHNE: I'm not scared of the other side. I'm scared that they might even leave them in, even though there was cause.

UNIDENTIFIED MALE SPEAKER: Yeah.
MS. ANGVIK: Did you drop the amendment?

MS. FROHNE: No, I have not. I'm not sure it

(indiscernible).....

MS. STURGULEWSKI: I didn't hear a second on that.

I'm sorry.

UNIDENTIFIED MALE SPEAKER: I did.

MS. STURGULEWSKI: Excuse me.

UNIDENTIFIED MALE SPEAKER: Yeah.

(Simultaneous speech)

MS. FROHNE: It certainly isn't. I shall

(indiscernible) to the far end of the table, Jane.

MS. ANGVIK: Would you rather I (indiscernible)?

MR. REED: There is no motion, except the main motion.

MR. CHIEI: There is a motion.

MS. STURGULEWSKI: Apparently, they did make a motion.

I didn't hear (indiscernible).....

MR. REED: They did make a motion?

MS. FROHNE: I love you, but (indiscernible).....

(Simultaneous speech)

MR. REED: On the basis of facts found, all right.

Question, who moved and who seconded?

UNIDENTIFIED MALE SPEAKER: Mary and (indiscernible).

UNIDENTIFIED FEMALE SPEAKER: Mary and Jane.

MR. REED: Mary -- Mary and Jane.

UNIDENTIFIED FEMALE SPEAKER: Who's a smoker?
UNIDENTIFIED FEMALE SPEAKER: I'm going (indiscernible).....

UNIDENTIFIED FEMALE SPEAKER: Jane.

MR. REED: On the basis of the -- of facts found, addition to the end of that paragraph, 7.01.....

MS. FROHNE: I'm not at all.....

(Simultaneous speech)

MS. FROHNE: .....scared that they'll remove them without cause, I'm scared that they might not move -- remove them even if there is.

MR. REED: Well, let's -- let's go to vote.

(Simultaneous speech)

MR. REED: All those in favor?

MS. ANGVIK: Aye.

MS. FROHNE: Aye.

UNIDENTIFIED MALE SPEAKER: No.

UNIDENTIFIED FEMALE SPEAKER: No.

MR. REED: Okay, rather (indiscernible) call role.

UNIDENTIFIED FEMALE SPEAKER: Did we (indiscernible).

MR. CHIEI: Read -- read the motion.

MR. REED: Okay. In the last sentence of 7.01, removal must be approved by 2/3 of the authorized membership of the Assembly or School Board, as the case may be, on the basis of the facts found, would be added.

MR. CHIEI: Basis of the facts found would be added?
MR. REED: Yeah. Angvik?

MS. ANGVIK: Yes.

MR. REED: Chiei?

MR. CHIEI: No.

MR. REED: Frohne?

MS. FROHNE: Yes.

MR. REED: Josephson?

MR. JOSEPHSON: No.

(No audible response)

MR. REED: Parker?

MR. CHIEI: Parker, where's Lisa?

UNIDENTIFIED MALE SPEAKER: She's been out for a couple of minutes.

MR. CHIEI: Well, she'll know what the issue is anyway.

MR. REED: Parsons?

MR. PARSONS: No.

MR. REED: Reed? No. Sturgulewski?

MS. STURGULEWSKI: No.

MR. REED: The motion failed, one, two, three, four, five.....

MS. STURGULEWSKI: Only because I think (indiscernible), Mary.....

MR. REED: Five (indiscernible).....

MS. FROHNE: I hope it is.
MS. STURGULEWSKI: Yeah.

MS. FROHNE: I hope it is.

MR. REED: Well, the main motion.....

MS. STURGULEWSKI: We never have a personal chance (indiscernible).....

MR. REED: .....before us to adopt Article VII in its entirety as submitted and amended. Questions?

MS. STURGULEWSKI: Question.

MR. REED: The questions is called. We should -- will I.....

UNIDENTIFIED MALE SPEAKER: Roll call?

UNIDENTIFIED MALE SPEAKER: Voice call.

MR. REED: All those in favor?

UNIDENTIFIED MALE SPEAKER: Aye.

UNIDENTIFIED FEMALE SPEAKER: Aye.

UNIDENTIFIED MALE SPEAKER: Aye.

MS. FROHNE: Mr. Chairman, I have one more. I'm trying to find where it ended.

MR. REED: All those opposed?

MS. FROHNE: I opposed because I've got one more.

MR. REED: It's the sense of the Commission to.....

UNIDENTIFIED MALE SPEAKER: Yeah, I wasn't ready either, to vote, Mr. Chairman.

MR. REED: The Chairman is trying to speed the thing along.